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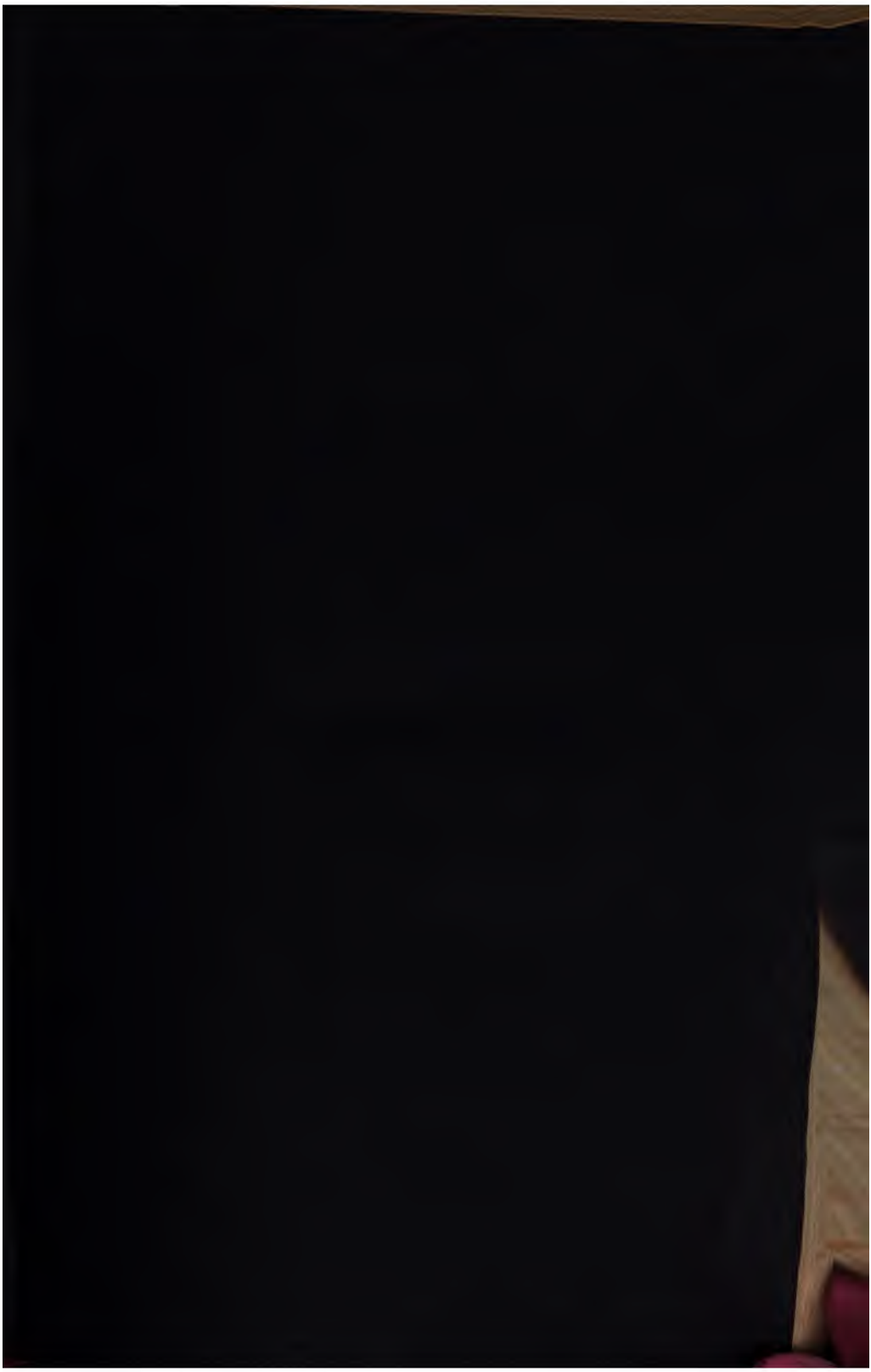

MILITARY LAW.

A

SHORT COURSE OF MILITARY LAW

AS APPLICABLE TO PERSONS SUBJECT TO THE MUTINY ACT;

TO WHICH IS ADDED

MILITARY LAW

AS APPLICABLE TO PERSONS SUBJECT TO THE INDIAN ARTICLES OF WAR.

PREPARED CHIEFLY FOR THE USE OF OFFICERS PASSING THROUGH A COURSE OF GARRISON INSTRUCTION.

By MAJOR GORHAM, R.A.,

GARRISON INSTRUCTOR, UMBALLA.

"Indocti discant et ament meminisse periti."

SECOND EDITION.

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PREFACE TO THE SECOND EDITION.

THE very favourable reception which has been given to the first edition of this book emboldens me to hope that a second edition may not prove unsuccessful.

The whole book has been most carefully revised and corrected to date, and a full index prepared. A chapter has been also added on Indian Military Law, which will be found useful, especially by Officers of the Staff Corps and Indian Local Army.

My best thanks are due to the numerous correspondents from whom I have received suggestions, etc., many of which have been adopted.

SIMLA, *September 1st, 1877.*

PREFACE TO THE FIRST EDITION.

IN this little work the Author lays no claim to originality. His object has been to collect, in a concise form, such information as it is necessary that Officers going through the course of garrison instruction should possess, and thereby to obviate the labour and loss of time occasioned by writing copious notes—time which can be but ill-spared in a short course during which so much has to be acquired.

Those who have the time and inclination to go more deeply into the subject are referred to such standard works as Simmons, Taylor, and Clode, to the study of which it is hoped that this may prove a suitable introduction.

The Author gratefully expresses his thanks to Col. Colley, C.B., for the information derived from lectures delivered by him at the Staff College, when the Author was a student there.

The Author will be most thankful to any one who will point out to him any errors or omissions which he may notice.

UMBALLA, *July 1st, 1876.*

TO THE STUDENT.

—:o:—

THE lectures should be read with the Mutiny Act at hand, and the references in the margin should be carefully looked up as one proceeds. Too great stress cannot be laid on this, as by this means alone can an intelligent familiarity be established with the Military Code.

When three or four lectures have been thus carefully studied, the student should turn to the questions at the end, and test his knowledge by trying to answer them, and subsequently correcting his answers by reference to the text. The pages on which the answers will be found are given in the margin opposite to each question.

The Appendices should be thoroughly mastered. Officers of the Indian Army should first learn the English Military Law, and then study the chapter at the end on Indian Military Law.

CONTENTS.

—:o:—

APPENDICES.

ABBREVIATIONS.

—:o:—

C.-in-C.	Commander-in-Chief.
C. O.	Commanding Officer.
D. J. A.	Deputy Judge-Advocate.
G. C. M.	General Court Martial.
Detachment G. C. M. .	Detachment General Court Martial.
D. C. M.	District or Garrison Court Martial.
R. C. M.	Regimental Court Martial.
Detachment C. M. . .	Detachment Court Martial.
P. S.	Penal Servitude.
H. L.	Hard Labour.
S. C.	Solitary Confinement.
M. A.	Mutiny Act.
A. W.	Articles of War.
I. A. W.	Indian Articles of War.
Q. R.	Queen's Regulations.
B. A. R.	Bengal Army Regulations.

LECTURE I.

THE subject of law is a very wide one. We, however, have only to consider that branch of the subject which concerns the duties we may be called upon to perform as Military Officers.

Common Law.

From the earliest times it has been found necessary to establish laws and regulations for the common welfare and for the protection of individuals. From the usages and customs thus engendered, arose a well-known and universal usage which is called "common law." This is an unwritten code, the maxims of which, coming down to us from ancient times, are usually quoted in Latin.

Statute Law.

The progress of civilisation has caused numberless questions to arise, to assist in deciding which, laws have, from time to time, been passed by the ruling authorities of the country. These constitute the written code, or "statute law."

To illustrate this: By common law all property belonging to a woman becomes absolutely her husband's on her marriage. By statute, however, enactments have been made to enable such property to be settled on the wife,—*i.e.*, to be made over to trustees, who, in their turn, are bound, by the law of trusts, to pay the income arising from such property in the manner directed by the deed of settlement.

For a law to become binding, it must be passed by both Houses of Parliament, and be approved by the Sovereign.

The civil law of the realm is supreme, and is equally binding on all persons, whether civil or military.

For the due maintenance of military discipline it has been found necessary to confer power on the military authorities, to enable them to deal with offences which it would be dangerous to leave to the civil authorities. Many acts, which are most serious crimes if committed by a soldier, are no crimes at all, or, at most, very trifling ones if committed by a civilian. Disobedience of orders, desertion, sleeping on post as sentry, drunkenness under arms, insubordination, etc., are purely military crimes, and a special code is necessary to enable us to deal with them. The action of civil law is too slow for military purposes. The necessity, even now, of special codes for the Army is shown by the Homicide Act passed in 1862 for the speedy trial of soldiers committed for military murder. Hence arose military law, and as you may often hear of martial law, it will be well to understand the meaning of these terms and the difference between them.

Military Law defined.

MILITARY LAW is law administered under a special code, framed for the purpose of giving military authorities power to deal with offences, which are either not provided for by the civil law, or which it would be dangerous to leave to the civil power.

Observe that military law is regular in its administration, and is administered under a regular code by persons authorised to do so.

Martial law is irregular in its administration ; has *no* code. It is only used in emergencies, and is then exercised by persons who have assumed the power.

Civilians tried by military courts would, probably, not be awarded military punishments, and might be tried for offences purely civil ; and

though it is a power, which, by the custom of war, is entrusted to the officer commanding an Army on active service, yet such officer exercises it under responsibility to the laws of his country, and may be subsequently called to account for his actions. I should define it as follows:

Martial law is sway exercised by a military commander over all persons, whether civil or military, within the precincts of his command, in places where there is either no civil judicature, or where such judicature has ceased to exist. Martial Law defined.

There are three cases in which martial law would be in force, *viz.:*

1*st case.*—In the case of a conquered country.

The old laws having ceased to exist, the only law is that established by the military commander.

It must be remembered, however, that, in dealing with his own soldiers, his power is limited by military law.

The 2*nd case* is that of a country or district formally put under martial law by an Act of Parliament.

In this case, the same power which made the civil law, suspends it, and replaces it, temporarily, by the Military Code.

The 3*rd case* is, when, under circumstances of imminent danger, the executive proclaims martial law.

We had an example of this in Jamaica in 1866.

In this case the military authority and the civil authority clash.

It was formerly thought that the executive had this power, but the Lord Chief Justice, in Governor Eyre's case, denied this, and pointed out that martial law had never been proclaimed in England since the Petition of Right.

It *had* been so proclaimed in Ireland, but always backed up by an Act of Parliament.

Such a proclamation of martial law, being in itself illegal, cannot legalize acts done under it, though the forms of military law may be strictly adhered to; but it will materially diminish an officer's responsibility if the forms of military law *be* adhered to.

It must be remembered, however, that the executive has the same right as any private individual of taking the law into its own hands in case of necessity,—*e. g.*, a man killing another in defence of his own life.

In the Jamaica insurrection, the fact that Gordon (a man executed) was arrested outside the proclaimed district, greatly increased the responsibility.

Martial law should never be retrospective; only acts committed after its proclamation should be tried under its powers.

Punishments awarded by Courts Martial for crimes which would be tried by the civil power, were any civil judicature in force, are to be such as are known to the laws of England.

MILITARY LAW.

Military Code.

This is a distinct Code, regular in its operations. The Code consists of two parts—

(*a.*) Written.
(*b.*) Unwritten.

(*a.*) The written part consists of—

1. The Mutiny Act (annual).
2. The Articles of War.
3. The Regulations of Majesty for the time being.

(*b.*) The unwritten part is founded upon the established custom of the Army.

Both have been, to a certain extent, ascertained by decisions given by competent authority.

In old days, every commander made his own "ordinances" for the government of his forces. The prerogative to command and regulate the whole military force of the realm rested with the Crown.

These powers were frequently abused, and used as means of extortion and oppression. The Courts of Chivalry were perpetually clashing with those of common law; and, finally, in the reign of Charles the 1st, these grievances brought about the famous Petition of Right, which, practically, took away the commander's power of enforcing discipline. Deserters had to be treated as civil criminals, etc. The necessity for a special code became manifest in 1689, in the reign of William the 3rd, when some troops, ordered to Holland, mutinied, and marched north, having seized four guns and the treasure chest. They were subdued, but there was no means of dealing with the mutineers as such. The Parliament, therefore, passed a bill that, "Standing Armies and Courts Martial were unknown in England, but, in consideration of the perils of the time, no man mustered or in pay of the Crown should desert or mutiny on pain of death." This was the first Mutiny Act, dated 3rd April, 1689, and was only to hold good for six months. Since then the Mutiny Act has been passed annually. The whole establishment of the army is thereby submitted every year to the control of Parliament.

Articles of War.

In 1712, in Queen Anne's reign, the Articles of War made by the Sovereign were first formally

recognised, but they were made to apply only beyond seas.

In 1716 [George I.] the Sovereign was empowered, by the Mutiny Act, to make Articles of War for the government of the troops at Home, as well as abroad. The Articles of War, being thus made, have the same authority over soldiers as the Mutiny Act itself.

The Mutiny Act, being a regular Act of Parliament, binds civilians as well as soldiers, on such points as are therein especially declared to be applicable to the former.

The Articles of War are binding on soldiers only.

Therefore, all questions concerning civilians must be provided for in the Mutiny Act,—*e. g.*, billets, recruiting, apprehension of a deserter, compulsory attendance of a civilian witness, recruit deserting before becoming liable to military law, etc.

[Read the preamble to the Mutiny Act and Mutiny Act I.]

Note.—The MUTINY ACT is an Act of Parliament passed by both Houses of Parliament, and approved by the Queen *annually:* It is entitled "an Act for the punishment of Mutiny and Desertion, and for the better payment of the Army and their Quarters."

The ARTICLES OF WAR are ordinances framed by the Sovereign under the authority of the Mutiny Act for the government of the Army. They are *permanent* till altered by the Sovereign,—*i. e.*, they are not framed afresh annually, but remain in force till any alteration in them be made and published by the order of the Sovereign.

LECTURE II.

HAVING in my last lecture explained the authority under which military law is administered, I propose now to consider who are subject to it.

These persons are enumerated in Mutiny Act 2, and may be said to be all persons receiving permanent military full pay, except persons in the Indian Army, being natives of India. M. A. 2.

Officers on half pay are not subject to the Mutiny Act, except when holding staff or other appointments, for which they draw full pay in addition to their half pay. A. W. 109

A recruit is not amenable to military law until he shall have been attested, *or* received pay other than enlistment money (either is sufficient). Should he commit any crime before becoming so amenable, he must be dealt with by the Magistrate. M. A. 47.

Any man who has received pay, and served in a regiment for six months, is to be considered to be properly enlisted. This may be proved by production of the two last quarterly pay lists. M. A. 59.

MILITIA are liable to trial under the Mutiny Act when called out for training in peace, and for six months afterwards, for offences committed during such training; or when embodied in time of war or danger.

PERMANENT MILITIA STAFF are always liable. Neither Militia nor their permanent staff are, however, liable to death when called out for training.

VOLUNTEERS. The Act of 1863 provides that, when in actual military service, they are subject to the Mutiny Act.

The Act of 1871 provides that, when they are out for training in conjunction with Regulars, they are under the Mutiny Act.

They are not liable to the punishment of death, except on active service.

ARMY RESERVE and MILITIA RESERVE are liable to trial under the Mutiny Act when called out for training with Regulars, or when embodied in time of war, when they form part of the Regular Army.

PENSIONERS are liable to trial under Mutiny Act—

(1.) When called out for training.
(2.) When employed on the recruiting service.
(3.) When called out in aid of the civil power.
(4.) When in time of war they may volunteer to garrison any town or fortress.

They are liable for trial only for twelve months after the commission of the offence, or the apprehension of the offender, or, if there shall have been some manifest impediment, then within six months after such impediment shall have ceased to exist.

M. A. 97. Offences against former Mutiny Acts may be tried as if against existing one, but no persons can be tried for an offence committed more than three years ago, "unless the person accused, from having absented himself, or other manifest impediment, has not been amenable to justice within that period." In this case he can be tried at any time within two years after the impediment has ceased to exist. Persons, after they

have left the service, may be tried for offences committed whilst in the service,—*e. g.*, Lord George Sackville was tried for his conduct at the battle of Minden, the King having previously dispensed with his services, and he having demanded a Court Martial. The question, whether an officer could be so tried after having left the service, was referred to the Judges, who decided that he *could* be so tried. Simmons, para. 54.

Since 1863, all officers and soldiers of the Indian forces are under the Mutiny Act, except "officers, soldiers, and followers of the Indian army, *being natives of India*," who are subject only to the Indian Articles of War. M. A. 1.

Officers and soldiers of troops mustered and in pay abroad [except natives of India as mentioned above] are subject to the Mutiny Act and the English Articles of War. Such troops are Maltese Fencibles, West Indian Regiments, etc.

Persons coming under the denomination of "followers" of the army in the field, though neither enlisted, nor in pay, both Europeans and natives, are liable in India to trial,—Europeans under the Mutiny Act and Articles of War, natives under the Indian Articles of War. A. W. 164.

DURATION OF THE ACT.

The duration of the Mutiny Act is for twelve months. In India it takes effect, and continues in force, from the 1st of January after it was passed to the following 1st of January. In England it takes effect from the 25th of April for twelve months. In Ireland from the 1st of May for twelve months.

Its receipt at any station out of England is notified in orders, and it takes effect from the day it is so notified.

The Articles of War are permanent till any alteration may be made in them by the Sovereign.

AUTHORITY UNDER WHICH COURTS MARTIAL ARE HELD.

M. A. 6. The 6th clause of the Mutiny Act authorizes Her Majesty to grant commissions for holding Courts Martial, and also to grant warrants or commissions giving certain officers power to do the same, and to delegate their powers to others.

These warrants are as follows, *viz.* :

1. Warrant under sign manual to general officers commanding districts at Home, empowering them to convene, but *not* confirm, General Courts Martial.

☞ *Note.*—All General Courts Martial at Home are confirmed by the Queen.

2. Warrant under sign manual to general officers abroad, to convene and confirm General Courts Martial and District or Garrison Courts Martial, also to delegate these powers to any officer not under the rank of field officer.

Confirming powers limited as follows :— Sentences on a commissioned officer, of death, penal servitude, cashiering, or dismissal, must go Home for the Queen's decision.

3. Warrant under sign manual to the Commander-in-Chief in the East Indies to convene and confirm Courts Martial, and to delegate these powers to any officer not under the rank of field officer.

4. Warrant under sign manual to each of the officers commanding in the three Indian presidencies, authorizing them to convene and confirm Courts Martial, and to delegate these powers to a field officer.

Confirming powers limited as follow :— Sentences of death, penal servitude, cashiering, and dismissal, *on an officer*, must go to the Commander-in-Chief in India for confirmation.

5. Warrant under sign manual, empowering officers in command at Home to convene and confirm District and Garrison Courts Martial, and to delegate their powers of convening, but *not* of confirming, such courts to any field officer who is in command of not less than four companies.

The other warrants are those issued by the officers who hold these warrants from the Queen, delegating their powers, or appointing judges-advocate, provosts-martial, or the president of a General Court Martial.

In detached situations beyond seas, where a field officer is not in command, a captain may be authorized to convene and confirm District Courts Martial.

Courts convened without warrant.

(*a.*) Detachment General Courts Martial.
(*b.*) Regimental Courts Martial.
(*c.*) Detachment Courts Martial.

These courts are not assembled under the authority of these warrants, but under the authority of the Mutiny Act and Articles of War.

(*a.*) Under M. A. 12; A. W. 107.
(*b.*) Under M. A. 10; A. W. 112.
(*c.*) Under M. A. 10; A. W. 113.

These warrants are not personal, they are made out to "The Officer Commanding, etc.," so that, if the command change hands, a fresh warrant is unnecessary.

They are always signed and countersigned,— *e. g.*, by the Queen and the Secretary at War; or, in the case of a warrant delegating power, by the General Officer and the Adjutant-General.

They are usually issued afresh annually, but no duration is specified.

M. A. 97. The Mutiny Act directs that they shall continue in force, notwithstanding the expiration of the Mutiny Act under which they were issued.

They also empower officers to deal with offences though committed before they took command, and irrespective of the place where committed.

It is left to the discretion of the officer holding the warrant to delegate his powers or not to do so; and, abroad he may delegate power to convene *and* confirm, or to convene only, as he thinks fit.

GENERAL RULES.

1. The president must be named under the authority of the convening officer, and must, in *no* case, be the confirming or investigating officer; and only in the case of a Detachment General Court Martial can he be the convening officer.

[*Query.*—What constitutes the investigating officer? *Answer.*—The officer who had the power of disposing of the case.]

2. The members must be commissioned officers, and on full pay, or holding such staff appointments as reckon as full pay service.

Note.

(*a.*) Non-combatants cannot sit as presidents, but may as members.

(*b.*) Officers of the Army and Marines may be associated on Courts Martial, and are guided by the Mutiny Act, or Naval Code, according to the branch to which the prisoner belongs.

(*c.*) No officer can sit on a General Court Martial unless he has held a commission for three years before the assembly of the court.

Authority under which a G. C. M. assembled. To trace the authority under which a General Court Martial would be assembled at Umballa—

1. The Mutiny Act gives the Queen power to frame Articles of War, and to issue warrants for

assembling Courts Martial, and to enable officers holding such warrants to delegate their powers to others, and to appoint judges-advocate and provosts-martial.

2. Under this power the Queen issues a warrant under the sign manual to the Commander-in-Chief of the Bengal Presidency (who is also Commander-in-Chief in India, and gets another warrant in that capacity), giving him power to convene General Courts Martial and to delegate that power to any field officer.

3. Under this warrant, Commander-in-Chief issues a warrant to the Officer commanding the Sirhind Division, authorizing him to convene General Courts Martial.

4. Under this authority, the Officer commanding Sirhind Division convenes the Court in orders, naming the President, Prosecutor, and Judge-Advocate.

NOTE.—*Although officers commanding divisions in India hold warrants authorizing them to convene General Courts Martial, yet, under instructions from superior authority, they refer all cases requiring a General Court Martial to the Commander-in-Chief of the Presidency, and the Charge (if the Court be ordered) is signed by the Adjutant-General. The holding these warrants gives to officers commanding divisions the power to sanction trial by District or Garrison Court Martial of offences properly only triable by General Court Martial.*

The president is appointed by name; the names of other members need not be given. It is usual to order each brigade or corps to furnish so many field officers, captains, or subalterns, as the case may be.

At Home, the president and judge-advocate are always appointed by warrant for a General Court Martial. In India, it is the custom simply to detail them in orders.

Observe, the president need not always be *named* by the convening officer, but must always

be appointed *under his authority,—e. g., the Officer commanding Rawul Pindi Division ordering a District Court Martial to assemble at Jhelum, could order "the Officer commanding at Jhelum will detail a field officer president of the court," and the Officer commanding at Jhelum could detail himself if he chose [of course supposing him to be a field officer, and that Jhelum is in the Rawul Pindi Division.]*

A Regimental Court Martial can, of course, be convened and confirmed, under the authority of the Articles of War, by the officer commanding the regiment; but observe, that a Detachment Court Martial can be convened and confirmed by the senior officer on the spot only,—*e. g.*, a battery of artillery under a Major's command is on the line of march, and a wing of an infantry regiment also under a Major: the senior of the two only can convene a Detachment Court Martial. Or, again, a detachment is marching from Delhi, through Umballa, to Mean Meer : when halted at Umballa, the officer commanding the detachment cannot convene a Detachment Court Martial unless he be senior to the officer commanding in Umballa.

LECTURE III.

OFFICERS of the regular forces cannot sit upon Militia Courts Martial; nor can officers of Militia, on courts held upon members of the regular forces, except as specified in Article of War 151. See also Mutiny Act 104. A. W. 151.

Volunteers are to have their own Courts Martial. They would be assembled by an order of the Secretary of State for War, who has a warrant from the Crown. When Militia is embodied, the commanding officer can assemble Regimental Courts Martial at any time. When not embodied, he can assemble one, summoning officers from their homes; but if a General Court Martial be needed for a serious case, a warrant from the Crown is needful.

A Regimental Court Martial or Detachment Court Martial may be convened and confirmed by the officer commanding the regiment or detachment, *provided he be not under the rank of captain.*

On board a ship not in commission, the military officer in command may convene and confirm a Detachment Court Martial, no matter what his rank.

A subaltern, therefore, can convene such a Court Martial on board such a ship, *but nowhere else*,—*e. g.*, he cannot convene one on the line of march.

The only other court a subaltern can convene, under any circumstances, is a Detachment General Court Martial.

☞ *Note carefully, that a Military Court Martial cannot be held at all on board any of Her Majesty's ships in commission.*

Should a soldier, on board such a ship, commit a minor offence, he can be punished by the captain of the ship, provided that the military commanding officer concurs in the punishment; but should a case occur which renders a Court Martial necessary, the man should be kept a prisoner till he can either be landed, or transferred to a transport *not* in commission, and there tried.

There are several descriptions of Courts Martial, varying according to the rank of the person tried and the gravity of the crime. They are:

1. General Court Martial.
2. Detachment General Court Martial.
3. District or Garrison Court Martial.
4. Regimental Court Martial.
5. Detachment Court Martial.

To which we may add District Court Martial for trial of a warrant officer, as such a court is rather differently constituted.

With regard to powers to sentence, they may be divided into three classes, *viz.:*

(*a.*) General and Detachment General Courts Martial.
(*b.*) District or Garrison Courts Martial.
(*c.*) Regimental or Detachment Courts Martial.

A General Court Martial must have as a minimum, either 9, 7, or 5 members according to station, *viz.*, in—

United Kingdom ...	9	members.
East Indies ...		
Malta ...		
Gibraltar ...		
Nova Scotia ...	7	„
Bermuda ...		
Other foreign places ...	5	„

These are the *minimum* numbers. You may have as many *more* on the Court as you like. It is

usual to put on one or two extra members, so that, should anything happen to a member, they can go on without him. There is generally an odd number.

In cases where non-military offences are tried by Court Martial under Mutiny Act 101, it is directed by Bengal Army Regulations, 1402, that the court shall consist of 13 members.

One of the members is styled the president. He is appointed by the convening officer,—at Home by warrant; in India, simply in orders. He is necessarily the senior combatant officer. His rank varies according to that of the prisoner. He is usually either a general officer or a colonel, and *must* be a field officer, except when one cannot be had, when a captain may be appointed.

When a commanding officer is to be tried, officers who have held similar commands are to be selected, if possible. Q. R., VI, paras. 54, 55, 56.

When an officer is tried, the members should, if possible, be of senior rank to the prisoner. A. W. 106.

On the trial of a subaltern, not more than two subalterns to be on the court; on that of a field officer, *no* subaltern is to be on the court. Q. R., VI, para. 55.

The presence of a judge-advocate, or deputy judge-advocate, legally appointed to act as such, is legally necessary during the whole of the proceedings of a General Court Martial; at Home the deputy judge-advocate attends; abroad, a deputy judge-advocate is usually appointed by the convening officer.

The following cases can be tried *only* by a General Court Martial, *viz.*:

1. Offences by commissioned officers. M. A. 101.
2. Civil offences tried by Courts Martial. A. W. 143, 144, 145.

A. W. 13. 3. Appeals from Regimental Courts of Enquiry.

4. Certain crimes, unless special sanction be given for their trial by a lower court. For these, see Appendix D.

M. A. 8, 15. A General Court Martial can sentence an officer to—

a. Death.
Penal servitude, not less than five years.

M. A. 17. *b.* Imprisonment with or without hard labour, not exceeding two years.
Dismissal.
Fine.
Refund to make good loss or damage, obligatory.

A. W. 25. Cashiering [imperative for some crimes, for which, see Appendix C.]

Reprimand.

A. W. 125. *c.* Reduction to lower place on list of rank, army or regimental, or both.

d. Forfeiture of service.

In above, note as follows:—

a. Only for offences which the Mutiny Act makes especially liable to those punishments.

b. Only for offences against Mutiny Act 17.

c. Only to officers of the British or local Indian army.

d. Only to officers of the Indian staff corps.

A. W. 20. Penal servitude: Officer sentenced to Penal servitude ceases, *ipso facto*, to belong to Her Majesty's service.

A. W. 116, 117. For punishments awardable to a warrant officer, see Appendix B.

To a soldier or non-commissioned officer, a General Court Martial can award, as above—

(*a.*) Death. Penal servitude not less than five years.

(*b.*) Fine. Refund (obligatory). Dismissal. Imprisonment with or without hard labour, and solitary confinement not exceeding two years.

And any other punishment awardable by a District or Garrison Court Martial.

Penal servitude, in the case of a soldier, does not, *necessarily*, carry with it discharge from the service; but he *may* be discharged by order of the Commander-in-Chief at Home, or by the general officer commanding at foreign stations, and, as a matter of fact, he always *is* so discharged. Q. R., XX, paras. 5 & 58.

The undermentioned offences committed by a soldier must be tried by a General Court Martial, except—

1. By permission of the general or superior officer, which permission should be attached to the proceedings.

2. On board a ship not in commission, or on the line of march, *viz.:*

Mutiny or sedition. M. A. 15; A. W. 36.

Violence to superior officer in the execution of his office. M. A. 15; A. W. 37.

Disobedience to the lawful command of superior officer. M. A. 15; A.W. 38.

Sleeping on post as sentry. M. A. 15; A. W. 57.

Leaving post as sentry before being regularly relieved.

- Holding correspondence with the enemy.
- Cowardice on service.
- Abandoning or persuading to abandon post, etc.

A. W. 51 to 58.

By the 140th Article of War, an offence properly triable by a higher court may be tried by a lower one; the authority must, however, be A. W. 140

stated at the head of the proceedings, and noted in the return of Courts Martial to the Adjutant-General.

Letter J. A. G., 16th Jan., 1867, quoted in Simmons.

If a man be tried by a lower court, for an offence properly triable by a higher one, without the sanction of the competent authority, the trial is illegal, and the man escapes.

[*Query.*—What *is* "competent authority?"

Answer.—The officer who could have *convened* the superior court had it been assembled.]

DETACHMENT GENERAL COURTS MARTIAL.

M. A. 12.

These courts were established first in 1813, to repress plundering, etc., in the Peninsular.

A. W. 117.
A. W. 124.
A. W. 145.

They can be held in any place *beyond seas*, where it is impracticable to assemble a General Court Martial.

They are convened, without warrant, by the officer commanding the detachment, under the authority of the Mutiny Act and Articles of War, no matter what his rank.

They consist of any three commissioned officers, and the officer convening it may sit as president himself. This is the *only* case in which the convening officer can so sit.

They cannot try any offences, except those against the person or the property of an inhabitant of the country.

They "have the same powers of sentence as are granted by the Mutiny Act to General Courts Martial." Of course this means the same as a General Court Martial could give for the offence they are trying, were it tried before a General Court Martial; for death cannot be given for any crime not mentioned in Mutiny Act 15, nor penal

servitude for any crime not in Mutiny Act 15 or 17, except under Mutiny Act 101.*

Such court can only try any person under the immediate command of the assembling officer.

The sentence cannot be carried out, until it shall have been "approved and confirmed" by the general commanding the army, of which the detachment forms a part, and to which the person so tried, convicted, and adjudged belongs. [Indian Detachment General Courts Martial differ in this point.]

Note.—This is the only Court Martial which *must* be "approved" as well as "confirmed." All others need only be "confirmed."

This court is specially designed for the investigation of an alleged offence on the spot, in such cases as the march of detachments, to and from depôts, hospitals, etc., on the line of communications of an army, and when soldiers might commit an outrage on an inhabitant, and it would be inconvenient to convey the witnesses to head-quarters.

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* Note.—*See however Article of War* 145, *by which it appears that, for such civil crimes as could, under those circumstances, be punished by death or penal servitude, by a General Court Martial, a Detachment General Court Martial has the same powers.*

Article of War 189, *doubtless, clashes with both these two Articles.* [*A. W.* 143, *and A. W.* 145], *as it does also with certain others* [*see pages* 88, 89]; *and, as the same authority gives the power by one Article which deprives you of it by another, one can only judge bythe evident intention of the Articles. See remarks on page* 89.

LECTURE IV.

DISTRICT OR GARRISON COURTS MARTIAL.

THESE courts were first established in 1829.

Composition. A. W. 108.

They are composed of 7, 5, or 3 members.

United Kingdom	7	members.
East Indies		
Malta		
Gibraltar		
Nova Scotia	5	„
Bermuda		
Any other place... ...	3	„

N. C. O. of V. P. S.

For trial of a non-commissioned officer of the Volunteer Permanent Staff, five members are sufficient, *viz.:*

President, a field officer named by Secretary of State, and four members, who must be officers of the Volunteer Permanent Staff.

Warrant Officer. A. W. 111.

For trial of a warrant officer, the court must consist of seven or five officers, according to station. At Home, 7. In India, 5.

Observe that, in India, a District or Garrison Court Martial must always consist of seven members for trial of any but a warrant officer, for whose trial five are sufficient,—[*e. g., for trial of a hospital apprentice, a District or Garrison Court Martial must consist of seven members at least.*]

A. W. 111.

Such court *must*, however, be specially constituted for trial of a warrant officer, and usually is so for a hospital apprentice.

1. The president must be a field officer if one can be obtained; if not, then a captain may sit.

2. Not more than two officers belonging to the regiment with which the warrant officer is serving, may be upon the court.

3. Not more than two subalterns are to be upon the court.

In India there is the further exception that the court must be assembled, or convened, by the *officer commanding the presidency.* In England it would be convened by the officer commanding the district.

For punishments awardable to warrant officers, see Appendix B. A. W. 128.

For punishments awardable to a hospital apprentice, see page 115.

POWERS OF SENTENCE, DISTRICT OR GARRISON COURT MARTIAL.

A District or Garrison Court Martial can give a non-commissioned officer, or soldier, all the punishments which a General Court Martial can give, except death, penal servitude, and fine, for offences against Mutiny Act 17, *viz.:*

IMPRISONMENT with hard labour and solitary confinement not exceeding two years. [For limits of solitary confinement, see Appendix A.] M. A. 26; A. W. 126.

CORPORAL PUNISHMENT, not exceeding 50 lashes; but this cannot be awarded in time of peace, in Her Majesty's dominions. M. A. 22-24; A. W. 118—120.

FORFEITURES, *viz.:* A. W. 117.

1. Good conduct pay or badge, either absolutely, or for a period of not less than 18 months.

2. Medals, decorations, and annuity or gratuity thereto appertaining.

3. Advantages as to pension from past service.

4. Advantages as to good conduct pay, and pension on discharge, either from past or from future service.

A. W. 130—134. STOPPAGES, to make good.

1. Bounty or free kit fraudulently obtained.

2. Loss or damage occasioned in any instance of disgraceful conduct.

3. Loss or damage to property occasioned by wilful or negligent misconduct.

4. Medals or decorations made away with or pawned.

5. Loss or damage of arms, clothing, necessaries, etc.

6. Expense necessarily incurred by drunkenness, or misconduct.

A. W. 137. REDUCTION. In the case of a non-commissioned officer.

A. W. 117. DISCHARGE WITH IGNOMINY, which carries all forfeitures with it.

A. W. 77. FINE FOR DRUNKENNESS, not exceeding £1, to soldiers, and reduced non-commissioned officers, to be awarded as an additional sentence, and therefore to *follow* the award of imprisonment, or reduction, and not to come first.

A. W. 128. [*For powers of sentence to warrant officers, see Appendix B.*]

The offences enumerated in Articles of War, 59 to 69, cannot be tried by any court lower than a District or Garrison Court Martial, nor can offences coming under disgraceful conduct, Articles of War 80, 81, 84 to 86, and several others, for which see Appendix F. But especially observe, that desertion and absence without leave over 21 days must go before a District or Garrison Court Martial or higher court, unless special

sanction be given for the latter (not the former) being tried by a Regimental or Detachment Court Martial.

The following offences cannot be tried by any other than a District or Garrison Court Martial, *viz.:*

Making a false statement to his commanding officer that he is a deserter. A. W. 46.

Making a wilful false answer at attestation. M. A. 48.

Also, if a soldier appeal against a fine for drunkenness imposed by his commanding officer, on the ground that he denies the act of drunkenness, the matter must be tried by a District or Garrison Court Martial. Should a commanding officer wish to have a private soldier tried by Court Martial on a charge of simple drunkenness, he must apply for a District or Garrison Court Martial, as a private soldier cannot (though a non-commissioned officer can) be tried for drunkenness *not* on duty by a Regimental or Detachment Court Martial. A W. 77-78.

A judge-advocate is not legally required at any but a General Court Martial.

REGIMENTAL COURTS MARTIAL.

These courts are for trying smaller offences, which do not need such severe punishments as a District or Garrison Court Martial has power to give. M. A. 10; A. W. 112.

They can try all non-commissioned officers and soldiers belonging to the corps in which they are held, subject to the limitation, that men who enlisted, or re-enlisted, before the 20th June, 1867, and whose time of service expires after the commission of an offence, and before trial, can only be tried by General or District Court Martial.

They can try any man of another regiment attached to them in orders. It would, probably,

be illegal to try a man of another regiment *not* so attached.

COMPOSITION.

A. W. 112, 114. Officers of the regiment, or depôt; but the president must not be the commanding officer (who convenes), nor under the rank of captain, except—

(*a.*) On board a ship not in commission.

(*b.*) On the line of march.

(*c.*) When a captain cannot be had.

It must consist of five members, unless it be impracticable to assemble that number, when three are sufficient.

POWERS OF SENTENCE.

It can sentence to

IMPRISONMENT with or without hard labour, and solitary confinement not exceeding 42 days; or

CORPORAL PUNISHMENT, 50 lashes [but not awardable in time of peace, in Her Majesty's dominions.]

REDUCTION in the case of a non-commissioned officer.

FINE, DRUNKENNESS, not over £1. To reduced non-commissioned officers and to soldiers convicted of having been drunk *on duty*.

STOPPAGES under Article of War 130, as by a District Court Martial.

NOTE.—*A Regimental Court Martial can sentence to corporal punishment or imprisonment, not to both.*

DETACHMENT COURTS MARTIAL

M. A. 10; A. W. 113. Are, in all respects, the same as Regimental, except that the officers composing them do not all belong to the same regiment, and they may try soldiers of any corps.

They are convened and confirmed by the officer commanding the detachment, provided that he be the senior officer on the spot, under the same restrictions as to rank as for Regimental Courts Martial,—*e. g.*, for a detachment marching from Delhi Camp, through Umballa, to Meean Meer, when halted at Umballa, the officer commanding the detachment cannot convene a Detachment Court Martial, unless he be senior to the officer commanding in Umballa.

POWERS OF A COMMANDING OFFICER.

A commanding officer, should he consider that a case is not sufficiently serious to require trial by Court Martial, can award—

IMPRISONMENT, with or without hard labour, and solitary confinement, not exceeding 168 hours.

DEPRIVATION OF PAY for day or days of absence without leave not exceeding *five*. A. W. 50. Q. R., VI, 12.

In the Royal Engineers, forfeiture or reduction of the rates of working pay.

FINE FOR DRUNKENNESS, to private soldier, not exceeding ten shillings. A. W. 77. G. O. 46, 1869.

CONFINEMENT TO BARRACKS for any period not exceeding 28 days, which carries with it punishment drill for 14 days.

Or the same without drill, for concealing disease, with or without an entry in the defaulter book, at the commanding officer's discretion.

EXTRA GUARDS, or PICQUETS, only for irregularities on these duties.

If imprisonment and confinement to barracks be both awarded, the two together must not exceed 28 days.

If a man, whilst confined to barracks, commit a second offence, he may be awarded a second Q. R., VI, 13.

punishment of 28 days' confinement to barracks, to commence at the expiration of the first; but he cannot get more than 56 days' continuous confinement to barracks, nor can he have more than 168 hours' continuous imprisonment by order of the commanding officer.

A scale, according to which fines for drunkenness are to be awarded, will be found in Queen's Regulations, VI, 15, but the law only limits it as not to exceed ten shillings.

Q. R., VI, 5. A commanding officer cannot punish a non-commissioned officer. Should he wish him punished, he must send him for trial to a Court Martial. Stopping leave, and not recommending for promotion, are *not* punishments. Leave is a privilege, not a right. Promotion is a reward. These remarks apply equally to officers, who may be sent to extra parades, etc., to learn their work, although a commanding officer cannot award
Q. R., VI, 18. them punishments. A private soldier cannot be tried for simple drunkenness by Regimental Court Martial, consequently, if a soldier commit drunkenness, and also some offence for which the commanding officer desires to try him by Regimental Court Martial, he should himself dispose of the drunkenness in the orderly room, and then send him for trial by Regimental Court Martial on the other charge.

If, however, it be determined to try him by a higher court, the commanding officer is *not* so to dispose of the drunkenness, but a separate charge for drunkenness is to be preferred against him.

Q. R., VI, 19. For being drunk, a commanding officer can give confinement to barracks, as well as fine; but cannot give imprisonment; a commanding officer cannot dispose of absence without leave for more

than five days, which must go to a Regimental Court Martial at least, unless the general officer commanding dispense with such trial, when a commanding officer must give such a punishment as entails an entry in the defaulter book.

A soldier can appeal from the decision of his commanding officer *only* in the case of any award which touches his pay. Power of Appeal. Q. R., VI, 17; A. W. 50.

There are two exceptions to this rule, *viz.:*

1. A soldier cannot appeal against a fine for drunkenness, unless he denies having been drunk. A. W. 77.

2. He cannot appeal against stoppages for barrack damages properly assessed by a Board. A. W. 13.

The commanding officer may, *if he think fit*, delegate to officers commanding troops, or companies, the power of awarding seven days', or less, confinement to barrack. Such punishments to be always brought to his notice and approved by him. Q. R. VI, 18.

Such officers have no power of punishment, unless the commanding officer choose so to delegate his power.

LECTURE V.

PROCEEDINGS BEFORE TRIAL.

A. W. 18. ANY officer or soldier charged with an offence, is to be put in arrest or confinement, and either released or tried by Court Martial "within a reasonable time."

Q. R., VI, 27. The Queen's Regulations direct that a soldier is not to be kept a prisoner more than 48 hours, exclusive of Sundays, without having his case enquired into, and, either disposed of by commanding officer or reported to superior authority.

For minor offences a soldier is not to be made a prisoner, but ordered to attend at the next orderly room.

Q. R., VI, 5. Non-commissioned officers are to be placed under arrest, not to be sent as prisoners to the guard room, except in extreme cases where such a step is necessary for their safe custody, or if they are violent.

Similarly, an officer is simply ordered under arrest, unless there be a probability of his absconding, or some other good reason, in which case a guard may be placed over him.

Arrest of Officers. As a rule, no one but the officer responsible for discipline should place another officer under arrest,—*i. e.*, the commanding officer or an officer conveying an order of arrest from him; except in cases of frays and disorders, when by Articles of War 15 and 40, any officer can place another, even his senior officer, under arrest, and if, under these circumstances, such officer refuse to go under arrest or draw his sword upon such

officer, he *must*, if convicted thereof, be sentenced to be cashiered.

This is the *only* case in which, by the Articles of War, a junior officer is authorized to place his senior under arrest.

In such glaring cases as a senior officer coming upon parade drunk, the next senior has been held to be justified in putting him under arrest. It must, however, be some very extraordinary circumstance which would justify a junior in taking so serious a step. In nearly all cases, both of seniors and juniors, it would be quite sufficient to report the matter to the commanding officer. Simmons, page 149. Lieut.-Col. Hogg's case.

A junior officer *cannot* refuse to go under arrest when put in arrest by a senior. He *is* under arrest, whether he acknowledges it or not; and if he do not at once proceed to his quarters or tent, he has broken his arrest, and, if tried and convicted thereof, he must be sentenced to be cashiered. A. W. 96.

No officer can put another or a non-commissioned officer in arrest, nor can he confine a soldier, if an officer senior to himself be present, except in the case above mentioned.

The rules for officers in arrest will be found in Queen's Regulations, VI, paragraph 53. Q. R., VI, 53.

If a guard be placed over an officer in arrest, this does not free the officer from the responsibility of arrest, nor from the consequences of breaking his arrest; nor would an officer in charge of such a guard be allowed to permit his prisoner to go out on parole.

In 1831, Lieuts. Naylor and Williams, 8th Native Infantry, were both cashiered,—Lieut. Naylor for breaking his arrest, and Lieut. Williams Quoted in Simmons, para. 355.

for allowing him to leave his place of confinement: Lieut. Williams was on guard over him.

A. W. 16. Any officer commanding a guard, or provost-martial, must accept a prisoner committed to his charge by any officer or non-commissioned officer, but such officer or non-commissioned officer must, without unnecessary delay, deliver an account in writing, signed by himself, of the crime with which the prisoner is charged.

The Queen's Regulations direct that when an officer is placed in arrest, the circumstances are to be brought to the knowledge of the general officer commanding.

An officer can only be released from arrest by the authority which imposed it, or by the superior to whom it was reported. An officer cannot demand a Court Martial, neither can he refuse to be released and to return to duty. If aggrieved, he may forward his complaint in a proper manner to superior authority.

A. W. 72. A. W. 74. A. W. 18. A crime must be made out against a soldier within 24 hours of his being confined; and he is to be brought to trial within a reasonable time.

For drunkenness, he should not be brought up before the commanding officer at the orderly room, till after 24 hours have elapsed, to make sure of his being then sober.

A soldier once confined can only be released by the authority of the actual commanding officer,—*e. g.*, if confined in regimental guard, by the regimental commanding officer or his representative; if confined in a garrison guard, by the officer commanding the garrison or his representative.

Q. R., 31, 32. Putting arms in a prisoner's hands, or detailing him for a duty, does not condone the offence, if

done by error ; but, if done purposely, it would condone it. This does not, however, apply to a prisoner having to carry his arms and accoutrements whilst marching.

INVESTIGATION.

As soon as possible after the commission of an offence the commanding officer investigates it. If a minor offence, he disposes of it himself, awarding punishment as authorised by the Queen's Regulations.

If the sentence affect the soldier's pay, and he appeal from it to a Court Martial, his doing so is no aggravation of the offence.

It has been ruled that, if the commanding officer award punishment to a man, and then cancel it, and send the case for trial before a Court Martial, it is illegal. The case must, however, have been *finally* disposed of by him,—*i. e.*, the man marched out, and released, or his punishment commenced.

If the commanding officer think a Court Martial necessary, he orders a charge to be prepared (if the one on which the man was brought before him be not correct), and if he intend to try him by a Regimental Court Martial or Detachment Court Martial, he simply orders the court. If he consider the case one for a higher court, he makes application to superior authority on the proper form [W. O., 733] for such Court Martial: and he forwards a précis of the evidence, and states the man's character, service, &c., to enable the general or other officer to judge whether the case be a proper one for trial by Court Martial.

The commanding officer must be guided by Article of War 140, which prohibits trying men

on vague charges, so as to try by a lower court an offence properly only triable by a higher one. Also commanding officers are not to prefer charges against officers and soldiers, which they might have dealt with on their own authority,—*i. e.*, a slight charge is not to be tacked on to an important one. I shall say more on this point when we come to "Framing Charges," but what I mean is, a commanding officer cannot prefer two charges against a man: For say,—

1*st charge.*—Having been drunk on guard mounting parade.

2*nd charge.*—For his rifle having been dirty on that parade.

or

1*st charge.*—Desertion.

2*nd charge.*—Being improperly dressed, being in plain clothes.

He should be tried for drunkenness on duty in the first case, for desertion in the second case; otherwise, if found not guilty of the important crime, a conviction of guilty might still pass on the trifling fault, which, but for the fact of his having been accused of the other crime, would never have been sent for trial before a Court Martial.

Drunkenness, as mentioned before, is an exception to this rule, as, if it accompanied the grave crime of which the man is accused, and if the man be tried by any Court above a Regimental or Detachment, it is to form a separate charge.

If the commanding officer wishes to have the case tried by a lower description of court than the offence is properly liable to, he sends in a letter to that effect, stating his reasons.

The application for a Court Martial is addressed to the staff officer of the general officer,—*i. e.*, Brigade Major, or Deputy Adjutant General, as the case may be.

The charge is looked over by a staff officer (in India usually by the Deputy Judge-Advocate), who, should he see any illegality, points it out to the general or other convening officer, who may order the charge to be amended.

The same form of application is used for a General Court Martial as for a District or Garrison Court Martial.

For a General Court Martial at Home, the application goes on to the judge-advocate, with a covering letter asking whether the evidence is sufficient to maintain the charge, and he may amend the charge.

The officer to whom the application goes, who is, of course, the officer who has the power of convening the court, may either do so, or decline to do so, or order the man to be tried by a lower court than that applied for.

There is, however, *one* case in which he has no discretionary power to dispense with the trial,—*viz.*, when a Court of Enquiry reports that a soldier has maimed or mutilated himself, or that he instigated any other person to maim or mutilate him, with intent to render himself unfit for the service. In this case, the soldier *must* be put on his trial before a General, District, or Garrison Court Martial on a charge for disgraceful conduct. A. W. 82.

Also, of course, the general officer could not order desertion or simple drunkenness in a private soldier to be tried by Regimental Court Martial, because the Articles of War expressly state that they shall not be so tried. A. W. 78, 136.

Well, if the general or other officer determine to try the man, he convenes the court in orders, and appoints the president, prosecutor, and, where required, the judge-advocate.

The members are not usually named, nor can the prisoner demand to know their names beforehand.

The prosecutor is always named in the application for the court; if the charge be approved, he cannot be changed without the authority of the general.

The duties of prosecutor used to devolve on the person who originated the charge. It is not necessarily so now; any person, himself subject to military law, may be detailed for the duty.

Q. R., VI, 58. The prisoner is to be given, by a commissioned officer, a copy of the charge or charges, if possible, at least 24 hours before the court assembles. If he cannot read, they are to be read over and explained to him by the person who warns him for trial; and the Queen's Regulations direct that he is to be given a list of all witnesses for the prosecution.

His not having been warned, however, would not, necessarily, invalidate the trial.

SUMMONING WITNESSES.

M. A. 13. It is the duty of the deputy judge-advocate, or president when there is no deputy judge-advocate, to summon witnesses required by either the prosecution or the defence.

The form for summoning civilian witnesses will be found in Queen's Regulations, Appendix B.

For military witnesses a summons is not generally issued; they are ordered to attend.

When military witnessesare required, who are not serving in the district or division in which the Court Martial is held, application is to be made to the Adjutant-General, head-quarters. Q. R., VI, 60.

No one can claim exemption from a summons, except the Queen.

Summonses are, however, to be issued with discretion.

If the prisoner should call for an unreasonable number, or for people at great distances, the officer whose duty it is to issue the summons may refuse to do so, and leave it to the court to decide.

A summons must always be served personally, either by a non-commissioned officer or a policeman. If at a distance, it would be sent to the nearest military station or to the civil authorities.

Summonses are always prepared in duplicate; one given and one retained, by the server, with a note on it of the place and date of serving made at the time.

LECTURE VI.

President. THE President is necessarily the senior combatant officer. He is responsible for decorum being maintained, and every one being treated with proper respect. His powers extend not only over members, but over every body present in court, whether senior to him or not.

A. W. 161. Any case of contempt of court may be summarily disposed of. If a more serious offence be committed, charges may be preferred by the court, or a special report made of the circumstance. Should the prisoner be the offender, it is ordered that, if the court do not think it desirable to send charges against him for the contempt to the convening officer, with a view to his being subsequently tried for the offence, they should wait till the end of the proceedings *on the day that the contempt was committed* (and although the trial may not then be completed), then record the contempt, hear any apology, &c., which the prisoner may desire to make, pass sentence on him for the contempt, and forward it to the convening officer.

It must be observed that the punishment must be for the contempt of court, *not* for the offence committed,—*e. g.*, a prisoner struck an officer, the Adjutant, in court, and the court awarded him punishment for so doing, under Article of War 37.

This was illegal, and the sentence was quashed; they had no power to try any offence but the one on which he was arraigned, as to which they had been sworn, "the matter *now* before you:" but they could have punished him for contempt of court.

Correspondence.

The President acts in the name of the court in correspondence, which is signed by him only. In all courts except General Courts Martial, he usually has to perform the duties of Deputy Judge-Advocate, *viz.*:

1. Administering oaths.
2. Summoning witnesses.
3. Advising the court on points of law.
4. Writing the proceedings.

If another officer administer the oaths, or write the proceedings, he does so under the President's authority, and by his order.

A. W. 162.

The President takes the votes of the court commencing with that of the junior member. If collected by the Deputy Judge-Advocate as is generally the case where there is one, the Deputy Judge-Advocate is merely assisting the President in his duties, and so collecting them by his order.

Casting Vote.

On minor matters, such as receiving or rejecting evidence, or deciding on the prisoner's challenge of a member, the President has a casting vote, but otherwise he votes only as an individual member.

Votes equally divided.

If an even number of officers are on the court, and the votes are equally divided, the prisoner gets the benefit of the doubt,—*e. g.*, if half vote for "guilty," and half for "not guilty," a finding of "not guilty" is to be recorded.

It is the same with punishment; if half of the members vote for imprisonment for 84 days, and

half for only 56 days' imprisonment, the smaller punishment is carried.

The practice of adding up the number of days each member votes for and then striking an average, and recording this, as in the case above mentioned, as 70 days, is, in my opinion, illegal. The result is to record a sentence which has, probably, not been voted for by any one member of the court; and it renders it possible for a senior member, by voting for more than he would have done, did he not know that an average would be struck, to bring up the average to what he wishes.

Should more than one kind of punishment be voted for, the majority would decide the nature of the punishment, and then the votes would all be taken again as to the amount,—*e. g.*, if, on a General Court Martial of nine members, four vote for penal servitude, and five for imprisonment, the imprisonment is carried, and the votes must be taken again to decide the amount of imprisonment.

Q. R., Appendix B. Should the President be taken away by death, sickness, &c., the court must adjourn for the orders of the convening officer. Should there have been more than the minimum necessary number on the court, so that the number remaining be sufficient, the next senior combatant officer *may* (if otherwise qualified) be *appointed* President, and the proceedings go on; or a new President may be appointed, and the proceedings must commence afresh, *provided that the old court had not recorded their finding.*

Should a member become unavoidably absent, the court may go on without him provided the minimum number remain, a certificate of the cause of his absence being attached to the

proceedings. To meet this possibility, one or two extra members are usually put on the court. It must be noted that no member, who has been absent during any part of the proceedings, can again take his seat. This happened once and stultified the proceedings.

Members have merely to give their votes, and award the amount of punishment. Members.

Any member may suggest a question to be put by the court,—*i. e.*, by the President, in the name of the court; but a member cannot put a question direct.

The Bengal Regulations recognize a questioning by Deputy Judge-Advocate after cross- and re-examination, and before the examination by the court; but the Queen's Regulations give no authority for his putting any question, except through the court, or with the permission of the court. See Queen's Regulations, Appendix B, where provision is only made for a witness being

Examined by the party calling him,
Cross-examined by the opposite party,
Re-examined by the party calling him,
Examined by the court. Simmons, 953.

Nor is there any mention of such power or duty in the list of his powers and duties in the Queen's Regulations. Q. R., Appendix A, 10.

If the court have once convicted a prisoner, but not sentenced him, a new court cannot be assembled, as by the provisions of the Mutiny Act and Articles of War "No person, who shall be acquitted, or convicted of any offence, shall be liable to be tried a second time by the same or any other Court Martial for the same offence." M. A. 14; A. W. 163.

If, then, there were only the necessary number of members on a Court Martial, and after convic-

tion, but before sentence, the President or one of the members died, nothing more could be done, and the prisoner would escape all sentence. The conviction would, however, hold good, *if confirmed;* and the usual entry of it would be made in the regimental books, and this conviction would carry with it all *necessary* consequences of such conviction,—*e. g.:*

A. W. 168. If a soldier had been so convicted of—

(*a.*) Desertion,
(*b.*) Maiming himself, &c.
(*c.*) Tampering with his eyes,

and such finding were confirmed, he would incur all the necessary forfeitures laid down in the Articles of War for these crimes.

DEPUTY JUDGE-ADVOCATE.

For his powers and duties, See Queen's Regulations, Appendix A, 10.

A. W. 159. He cannot be the prosecutor, or a witness for the prosecution, but *may* be called as a witness for the defence.

The presence of a Deputy Judge-Advocate is absolutely necessary at a General Court Martial.

Instance quoted in Simmons, 464. A soldier of the 8th Regiment was tried by General Court Martial at Portsmouth in 1839, and sentenced to transportation; but it appearing that the Judge-Advocate had not been duly appointed, or deputed, the prisoner was released, and his punishment remitted.

The Judge-Advocate or Deputy Judge-Advocate cannot be challenged on any grounds.

Simmons, 946-480. If called as a witness for the defence the minute of his examination would be written by the President, who would also swear him.

The Deputy Judge-Advocate arranges all preliminaries, even to the providing a room for the

court to assemble in. He summons witnesses, writes the proceedings, administers the oaths, and advises the court on points of law.

If he give his advice, and the court decline to take it, he has no right to enter the fact on the proceedings, unless directed to do so by the President ; but he should state the fact and the circumstances in a covering letter, when forwarding the proceedings to the Judge-Advocate General.

In a *closed* court his advice is confidential. When the trial is completed, he forwards the proceedings to the Judge-Advocate General.

He is sworn, but only not improperly to divulge the sentence of the court, or the individual opinion of any member. A. W. 152.

He always remains in court at deliberations, &c., and sums up at the end, but, of course, has no vote.

The warrant of the Judge-Advocate or Deputy Judge-Advocate may, at any time, be revoked by the authority which issued it, and he may be relieved during the trial by a substitute duly appointed; but the presence of some proper Judge-Advocate or Deputy Judge-Advocate, or officer duly appointed to act as such, is absolutely necessary throughout on a General Court Martial, or the court would not be legal.

The Judge-Advocate General and Deputy Judge-Advocate General in England are civilian lawyers, but Judge-Advocates and Deputy Judge-Advocates are always military men. The Judge-Advocate General and his deputy form a sort of final court, which has the power of upsetting, or "quashing" as it is called, all Court Martial proceedings : consequently they take no steps

in advising preliminary proceedings, &c., so that they may be impartial.

It may be observed, however, that the Deputy Judge-Advocates are supposed to give impartial opinions in court, although they have framed the charges before trial.

PROSECUTOR.

The prosecutor, who must be a person who is himself subject to military law, and who is usually a commissioned officer, either a staff officer or the adjutant, is appointed to conduct the prosecution.

A. W. 159. He may not be the Judge-Advocate at the trial.

Q. R., Appendix B. The Queen's Regulations direct that, "if possible, no officer who is to be called as a witness is to be appointed to act as prosecutor."

If he *be* a witness, he would be sworn first, and would state his evidence, being the only exception to the rule that the evidence must be given by question and answer.

A person not subject to military law may sometimes appear as "informant," or "complainant," but a military prosecutor would be detailed. The "complainant" would give his evidence first, and then remain in court to assist the prosecutor, but he may not make any remarks.

The prosecutor is not sworn, *as such*, and he leaves the court whenever it is cleared. His duties are—

1. To prepare and conduct the prosecution.

2. To furnish the list of the witnesses to be summoned.

3. To address the court—where necessary—at the opening of the prosecution, and examine the witnesses for the prosecution.

4. To cross-examine the witnesses for the defence.

5. Should the prisoner not adduce any evidence for the defence, the prosecutor will sum up the evidence for the prosecution as soon as his last witness has withdrawn.

6. Should the prisoner have such evidence to adduce, the prosecutor will defer this summing up till the prisoner has entirely completed his defence and addresses, when he, the prosecutor, will reply.

There is no objection to his being a witness as to previous convictions. He generally *is*. The absence of the prosecutor at any stage of the proceedings would not affect their legality.

PRISONER.

No proceedings in open court can, as a rule, take place in the absence of the prisoner. If he were ill, the court would have to adjourn.

If the prisoner persist in outrageous conduct, disturbing the proceedings of the court, he may be warned that, unless he desist, he will be removed and the proceedings go on without him.

It is the custom that the prisoner should not be handcuffed, or confined in any way, but if he be violent, there is no law against such restraint.

Legal advisers are not recognized, but the prisoner is allowed a "friend," who may be a barrister, to assist him. This friend, however, may not address the court, nor may he take any part in the proceedings.

When the prisoner is so assisted, the prosecutor is generally allowed the aid of a lawyer also, but application has to be made for permission to incur the expense. This is not usually granted in

India, where there are so many Deputy Judge-Advocates.

INTERPRETERS.

M. A. 13. In India there are officers regularly appointed. If an interpreter be required he must be sworn.

Simmons, 477. There is no form of oath prescribed, but the following is a good one:

"I, A B, do swear, that I will, to the best of my ability, faithfully and truly interpret and translate, in all cases in which I shall be required so to do, touching the matter now before the court.

So help me God."

A member of the court *may* act as interpreter. He should not be the Deputy Judge-Advocate, the prosecutor, a witness in the case, or any interested person.

LECTURE VII.

PROCEEDINGS ON TRIAL.

For form, see Queen's Regulations, Appendix B. The form of procedure in all Courts Martial is essentially the same. These remarks refer to General Courts Martial, but apply also, with obvious modifications, to lower courts.

The officers detailed for the court assemble pursuant to order, and should see that all the necessary books, papers, &c., have been provided.

All official books and orders having reference to Courts Martial are to be laid before every court when sitting. Q. R., VI, 57.

The President takes his seat at the head of the table, and the senior member on his right, the next senior on his left, and so on.

If an officer be promoted during trial, he would take his seat next day according to his new rank; except in case of his becoming senior to the President, who cannot be displaced, but would remain President till the trial was over.

The court should read over the charge, and, if there be any doubt, decide whether they are competent to deal with the case. If they consider that they are *not* so, they should adjourn, and report to the convening officer.

☞ Note.—*The charge can be amended any time previous to arraignment. The court cannot afterwards alter the charge, but can make a "special finding," omitting any part of the charge not material to the merits of the case.* *See page* 63.

The court is then opened, and the prisoner brought in under escort; the prosecutor and witnesses also appear in court.

The court is an open court,—*i. e.*, when not closed for deliberation, any one may be present, —*e. g.*, it would be illegal to exclude *any one*, such as newspaper correspondents. The court may, however, forbid the publication of the proceedings during the course of the trial.

A. W. 160. The hours of sitting are from 8 A. M. till 4 P. M., except in India, where they are from 6 A. M. till 4 P. M. They may, however, sit after 4 P. M. if there be a reason, which reason must be recorded. For an immediate example, where the convening officer certifies to the necessity, it may sit at any time.

The order for assembly of the court, and the warrants or order appointing the President and Judge-Advocate, are produced and read.

Challenge. The names of the President and members are read over, each officer answering "here sir," and the prisoner is asked if he objects to any of them. This is called "challenging them."

The prisoner cannot challenge the court generally; he must make his objection to each individual separately, commencing with the President, or senior.

Should he object to the President, the objection is recorded on the proceedings, as also any evidence in support of the objection. The President would not withdraw, but would not vote on the question; the other members vote, and to retain him, *two-thirds* must disallow the objection, otherwise it must be referred to the authority who appointed him, the court adjourning meanwhile.

After this has been disposed of, the court would enquire into any objection he may make to a member. In this case the member withdraws, and a majority of votes decides it.

In enquiring into this no oaths can be administered, for, till the court is itself sworn, it cannot administer an oath.

ORDINARY GROUNDS FOR CHALLENGE.

That the member objected to—

1. Had been a member of a Court of Enquiry on the subject.

2. Had been concerned in investigating the case, or preparing it for trial.

3. Has a personal interest in the case, such as being the owner of property which the prisoner is charged with having stolen.

4. Has previously expressed himself as prejudiced, or biassed.

5. Is a material witness.

6. Has not the necessary qualification by service or rank.

In civil law jurors must be *omni exceptione majores*,—that is to say, above all suspicion; and so must be the members of a Court Martial. At the Cape of Good Hope, a soldier was tried for stealing from a mess. Officers of the regiment to which the mess belonged were on the court, and it was considered that there was ground for challenging them. It has been decided to be undesirable, but not necessarily illegal, to put them on the court in such a case.

Observe the difference between things which vitiate trial and things for which a member *may* be challenged,—*e. g.*, an officer of less than three years' service sitting on a General Court Martial would vitiate the trial.

It is no ground for challenge that the court has already tried another prisoner for an offence arising out of the same circumstances.

Putting the prisoner's commanding officer on as President "is inexpedient," but, unless he investigated the case, not necessarily illegal. The officer who investigated the case *cannot* be President.

A. W. 114.

When challenges have been disposed of, the court is formed by being sworn in. The oath is administered to the President first, and afterwards to all the members collectively. The oath will be found in Article of War 152. The President then administers the oath to the Judge-Advocate [see same article].

The charge is then read, the witnesses ordered to withdraw, and the prisoner called upon to plead. He may plead—

1. Not guilty. 3. Refuse to plead.
2. Guilty. 4. Plead in bar of trial.

(1.) If he plead "not guilty," the trial proceeds.

(2.) If he plead "guilty," the court are still to take a sufficient amount of evidence to give a full knowledge of the circumstances, in order to award punishment. His pleading "guilty" suffices to cover all flaws in evidence, but does not cover any illegality, and he may still make a defence, and bring evidence in extenuation, and may cross-examine witnesses.

Q. R., Appendix A, 5.

(3.) If he refuse to plead, a plea of "not guilty" should be recorded.

(4.) PLEAS IN BAR OF TRIAL.

The commonest are—

Pleas in bar of trial.

(*a.*) That the Court has no jurisdiction over the prisoner.

(*b.*) That the prisoner is not amenable to military law.

(*c.*) That the court is not legally constituted.

(*d.*) That the offence is only triable by a higher court.

(*e.*) Lapse of time of limitation.

(*f.*) That the prisoner has already been tried for the offence, or punished by his commanding officer. A. M. 97.

(*g.*) Condonation.

Any such plea must be fully heard, and investigated, evidence being taken *on oath*, on both sides, if necessary, before deciding it. If several prisoners are tried together, they must be arraigned and called on to plead separately.

The prisoner may, if he think proper, reserve his objection to any illegality in the proceedings till he makes his defence, and it is then admissible; or, if the illegality were discovered after the trial were over, it would suffice to invalidate his conviction,—*e. g.*, if an officer under three years' service had been permitted to sit on a General Court Martial, if this were discovered subsequently, the conviction would not be valid.

(*f.*) "Punishment already awarded." An officer officially reprimanded. A soldier whose case has been disposed of in the orderly room. See remarks on trial of Captain Halliday, 10th Foot. Simmons, 562.

(*g.*) "Condonation" means pardon, and must be intentional,—*e. g.*, putting arms in a prisoner's hands for duty would condone the offence if done intentionally, not if unintentionally done. If a soldier were confined and subsequently released, he can still be tried, provided it were not done with a full knowledge of the circumstances, and the releasing him must have been done by competent authority, or it would not be condonation.

If the prisoner show signs of insanity, the court should take medical evidence on oath, and if the insanity be proved, find to that effect, and Insanity of Prisoner during trial.

adjourn. A mere medical certificate is not sufficient. Utter want of specification in the charge as to the matter, or time where time is essential, may be brought as a bar to trial on those grounds.

When these pleas have been disposed of, the trial proceeds.

It is a general rule to preclude witnesses on both sides from being present at the examination of other witnesses ; and it is on this account that the prosecutor, if a witness, must give his evidence first, and, similarly, if the prosecutor desire the presence of the complainant to assist him in the examination of other witnesses, such complainant has to give his own evidence first.

LECTURE VIII.

THE prosecutor may, if he wish it, make an opening address, after which he calls his witnesses. He must not introduce into his address any matter foreign to the charges; nor may he insinuate imputations not implied by them. "No reproachful words are to be used to the prisoner." This address must be written at length, and either recorded in full in the proceedings, or signed by the President and Deputy Judge-Advocate, and attached to the proceedings. A. W. 162.

A witness is called into court, and sworn; whilst being sworn he removes his cap and glove, and when sworn, he, if a military man, puts them on again. [This is of course in the case of Europeans.] He remains standing, unless sick, &c., when he may be given a seat. **Examination of a Witness.**

Every member of the court must be present during the examination of witnesses; for, as it has been said, "even the countenance, looks, and gestures of a witness add to or take away from the weight of his testimony." The examination is to be conducted by question and answer. The evidence is to be taken down in the first person, and as nearly as possible in the words of the witness. The witness is sworn by the Judge-Advocate, where there is one. If the witness have conscientious objections to an oath, he may make a solemn affirmation, which, however, renders him equally liable to punishment for perjury if he swear falsely as an oath would have done. Simmons, 452.

AN OATH is an outward pledge given by the person who takes it, that his attestation or promise is made under an immediate sense of his **Definition of an Oath.**

Simmons,444. responsibility to a Divine being, who, according to his belief, will be displeased at being called upon to witness the utterance of a falsehood.

Witnesses are sworn according to the form they deem the most solemn : Church of England witnesses on the Bible ; Romanists on the crucifix, or on a cross marked on the cover of the Bible ; Mahomedans are sworn on the Koran, either kissing it, or putting it on their heads. Jews are sworn on the Pentateuch, etc.

An oath may be administered to the witness by a minister of his own religion, if the prejudices of the witness render it desirable.

A Jew wears his hat in the synagogue, and, therefore, keeps it on whilst sworn. Jews regard no oath as binding, unless they have at least *one* hat on when they take it. When the witness has been sworn, his evidence is elicited by questions from the party calling him,—*e. g.*, if for the prosecution, by the prosecutor. If a question be objected to, and not withdrawn, it is entered on the proceedings ; and the court, after hearing the objection, decide whether it shall be put. In any case it must be entered on the proceedings, and not expunged. Great caution should be observed as to rejecting questions put by the prisoner. The Judge-Advocate General Mr. Mowbray has written: " It is a matter of great importance that a prisoner on trial by Court Martial should be restricted as little as possible in the examination of his own witnesses, or in the cross-examination of those called by the prosecution, as an error in this respect by the Court may invalidate the whole proceedings." An example of this occurred at Bombay in 1874 at a General Court Martial on Lieutenant E., who got off in consequence.

A witness is always examined first by the party producing him ; this is called the examination-in-chief ; he is then, usually, cross-examined by the opposite party ; he may then be re-examined, to re-establish his credibility, or on any fresh matter introduced by the cross-examination, and finally, the court may put any question they think proper. It is then usual to read over to the witness the record of the evidence he has given, to see whether it is correctly recorded. No erasure, obliteration, or addition is allowed, but any correcting statement is to be entered separately.

Examination-in-chief.
Cross-examination.
Re-examination.

When the prisoner declines to cross-examine a witness, it is always to be so recorded in the proceedings.

The court may recall a witness, and question him, at any time, subject to the rule that, after the prosecution is closed, it shall not (except in special circumstances), recall a witness for the prosecution to prove a fact material to the charge.

When the last witness for the prosecution has withdrawn, the prisoner is asked whether he intends to call any *witnesses* for the defence, or not. [The question is thus worded in Queen's Regulations, Appendix B ; but in Appendix A, 11, the expression is "*adduce evidence*," from which it appears that, if he adduce any evidence, documentary or oral, the prosecutor will wait till after the prisoner has completed his defence, and then give his second address, or reply.]

This question is to be put by Deputy Judge-Advocate in the name of the Court.

Q. R., Appendix B, and Q. R., Appendix A., 11.

If the prisoner have no such evidence to adduce, the prosecutor goes on, and makes his final address, summing up his evidence. Then the

prisoner addresses the Court in his defence; and then the Deputy Judge-Advocate sums up.

If the prisoner have witnesses, the prosecutor does not make his second address till after the prisoner has finished his defence, but the prisoner makes his opening address, calls his witnesses, and makes his closing address; the prosecutor would then reply, after which the Deputy Judge-Advocate would sum up.

In the rare cases in which the prosecutor is allowed to call witnesses on making his reply, (which would be only to re-establish the credibility of his witnesses, or to rebut new matter which the prisoner might have introduced in his defence), the prisoner would not make his second address till after such witnesses had been called and given their evidence.

Should the prisoner ask for time to prepare his defence, reasonable time would usually be granted.

Should he wish to call witnesses not already summoned, it rests with the discretion of the court to grant adjournment for that purpose or to refuse it.

Defence.

When the prosecutor has called all his witnesses, the prosecution closes, and the prisoner is placed on his defence. Whatever he may have pleaded, "guilty" or "not guilty," he is entitled to make a defence, which may be in extenuation of an admitted offence.

The defence may take various forms, *viz.:*

(*a.*) Disproving the facts of the charge.

(*b.*) Showing the evidence for the prosecution to be unworthy of belief.

(*c.*) Showing absence of criminal intent.

(*d.*) Proving insanity at the time of commission of the act, or that it was done under compulsion. Pleas in bar of trial may be brought up again in the defence, or the defence may be only in mitigation.

Misfortune or chance, where there has been no culpable negligence, is a defence; but if the act was unlawful, then chance only serves as a plea in mitigation.

Ignorance of the law is *no* defence.

Drunkenness is an aggravation of the offence.

The defence may be written or oral. If a written defence be handed in, it should be read, marked, and signed by the President and Deputy Judge-Advocate, and attached to the proceedings.

If the prisoner wish his defence read for him, it must be done by a person himself subject to military law. No civilian may address the court, or put questions to witnesses.

Great latitude must be given to the defence, but the prisoner must not be allowed to make statements disrespectful to the court, or to use coarse and insulting language, or to animadvert at all upon persons who have not been before the court.

The witnesses for the defence should be called—

1*st.*—To disprove the charge.

2*nd.*—With reference to character.

If the prisoner make a statement, or tender a document, which, if proved, would, apparently, benefit his case, he should be advised (by Deputy Judge-Advocate or court) to adduce evidence of it, and the proceedings should show that such advice has been given.

The defence being an unsworn statement, unproved documents may be received for what

they are worth; but any document tendered to disprove part of the prosecution must be duly proved before it can be considered as evidence.

The prisoner may open his defence with an address, then call his witnesses, and then make his final address. If the prosecutor call witnesses in reply, the prisoner does not make his second address till after they have been called. After each witness for the defence has given his evidence, the prosecutor may cross-examine, and then the prisoner may re-examine on such points as have been touched upon in cross-examination. The court may caution the prisoner, that the line of defence he is pursuing is not likely to operate in his favour, but may not refuse to hear him state arguments, which, notwithstanding such caution, he may persist in putting forward. [Letter of Judge-Advocate General on trial of Lieut. Dawson.]

Quoted in Simmons, 588.

The defence may rest entirely on pleas in bar of trial.

INSANITY.—The Court must be satisfied of "an absolute dispossession of the free and natural agency of the human mind;" if the accused has lucid intervals, and reason sufficient to know right from wrong, he is answerable for what he does in those intervals. The Judges have laid down that, "if the accused was conscious that the act was one which he ought not to do, and if that act was contrary to the law of the land, he is punishable." If he has delusions, he must be judged as if those delusions were true,—*e. g.*, if, in delusion, he believed another man to be trying to take his life, and, in imaginary self-defence, he killed that man, he could *not* be punished; but, if he thought that the other man had wrongfully got his estate, and under this impression killed him, he *would* be liable to punishment.

Black-stone.

MISFORTUNE OR CHANCE.—If an accidental mischief happen from the performance of a lawful act, the party stands excused from all guilt; but if the act be unlawful, he is then answerable for the consequences,—*e. g.*, if a soldier, at target practice, miss the target, and accidentally kill a bystander, he is not guilty of any crime; but if a man fire out of a window in a town at a dog in the street, and accidentally kill a person, he would be guilty of manslaughter.

COMPULSION, in such cases as a man being compelled to join mutineers, on pain of immediate death if he attempted to leave them, would be a defence.

REPLY—If there be no evidence for the defence, there is no reply; the prosecutor's final address being given at the end of the prosecution. Reply.

If there *be* witnesses, the prosecutor replies after the defence, and may call witnesses then, but only about new matter which may have been introduced by the prisoner in his defence, or to re-establish the credit of his witnesses. No additional proof of the original matter may be brought forward. He may impeach the credibility of the prisoner's witnesses. *In this last case only* can the prisoner call witnesses to contradict those called for the reply; he *may* re-establish the credit of the witnesses so impeached, by evidence.

The prosecutor, in his reply, must not state anything in the way of new facts relating to the case, or which partake of the nature of giving evidence. The finding of a General Court Martial at Rawul Pindi, in 1867, on a paymaster, was set aside, because the prosecutor, in his reply, stated new facts relating to the case, thus giving fresh evidence, adduced at the wrong time, after the prosecution had closed, and given by a Reply how limited.

person not on oath, and not open to cross-examination.

Summing up.

When the prosecutor has finished his reply, the Deputy Judge-Advocate sums up impartially, and lays down the law on any legal questions which may have arisen. The court generally adjourns to give him time to prepare the summing up. The summing up is written, but must be read in open court, and signed, and attached to the proceedings like any other document. In it the Deputy Judge-Advocate states clearly the several issues on which the court have to find, and points out the evidence for and against each ; but must carefully abstain from giving any opinion as to whether such issue be proved or not by such evidence. He points out any variances and discrepancies in the evidence on either side, but draws no conclusions as to the effect thereof, nor as to which party he considers most worthy of belief.

The court is then cleared for the finding.

LECTURE IX.

FINDING.

WHEN the court is cleared for the finding, the Deputy Judge-Advocate remains in court, but can take no part in the proceedings unless consulted on legal points.

The court can recall a witness, and put any question to him, but the court must be re-opened, and the witnesses can be cross-examined by either party.

The votes are taken separately on each charge, by the President, commencing with the vote of the junior member. When there is more than one prisoner, the votes are taken separately for each. The President has no casting vote. A majority carries the finding. Should the votes be equally divided, a finding of "not guilty" should be recorded. If acquitted, the finding is to be simply "not guilty," the term "acquitted" is not to be used; and such findings as "not proven," or "honorably acquitted," are wrong. The court may, if they please, write a separate letter saying that, in their opinion, there is not the slightest blemish upon the prisoner's character, &c.

A. W. 162. Simmons, 614.

Q. R., Appendix B.

If the prisoner was insane when he did the act, the finding should be, "the court do find that the prisoner No..... Rank.....Name..... Regiment..... ....., was of unsound mind at the time of committing the offence, and do, therefore, find him "not guilty of the same."

Special findings.

This is a special finding, which is a term applied to any finding except "guilty," or "not guilty."

The court may find the prisoner guilty of the whole or of a part of the charge. In the latter case they should find "guilty of the charge with the exception of ....," but if the part to be omitted be the essence of the charge, a verdict of "not guilty" should be recorded.

A court may find a prisoner guilty of a minor offence of the same class,—*e. g.:*

A. W. 37; M. A. 15. CHARGE.—Violence to superior in the execution of his office.

A. W, 41. FINDING.—Violence to superior officer.

A. W. 43. CHARGE.—Desertion.

FINDING.—Absence without leave.

A. W. 79. CHARGE.—Scandalous conduct, unbecoming the character of an officer and a gentleman.

A. W. 105. FINDING.—Conduct unbecoming an officer, and to the prejudice of good order and military discipline.

Thus, in the first case the charge was for a crime punishable with death as an extreme penalty, but, under the finding, an officer would be only liable to be cashiered, &c., and a soldier could not get more than two years' imprisonment with hard labour and solitary confinement, and forfeitures, or discharge with ignominy.

Similarly, in the last instance given, the charge was one for which the officer, if convicted, *must* be sentenced to be cashiered, but the finding was for an offence for which it is *not* imperative on the court to award cashiering.

Remember, however, that a court can never convict of *more* than is stated in the charge, although it may convict of *less*. It may convict of absence without leave when the charge was desertion, but it cannot convict of desertion when the charge was only for absence without

leave. Nor can the court convict of an offence of a different character,—*e. g.*, a soldier charged only with desertion could not be convicted of drunkenness or insubordination. He can only be convicted of *the same offence as he is charged with, but in a lower degree.*

A court may correct minor errors of date, or place, &c., in the finding,—*e. g.*, 1st charge, guilty, with the exception that the offence was committed at Mean Meer, instead of Lahore, and on the 1st March, 1875, instead of the 29th February, 1875, as stated in the charge." Correction of minor errors in Finding.

PROCEEDINGS BEFORE SENTENCE.

If the finding be "guilty," the court is not re-opened in the case of an officer, except there be previous convictions. In the case of a soldier it must, necessarily, re-open, as the Queen's Regulations require certain evidence to be taken as to the prisoner's age, character, service, decorations, etc., "*for the guidance of the court in awarding punishment, as well as for that of the confirming authority in sanctioning the award.*" This evidence, together with that of previous convictions, if there be any, and of previous instances of drunkenness (in the case of the trial of a soldier for drunkenness) is to be given orally, on oath, by a person himself subject to military law, who, when possible, is to be a commissioned officer who is not a member of the court." The points deposed to in the case of a soldier are— Q. R., Appendix A, 8.

1. Previous convictions (if any).
2. Previous instances of drunkenness (in case of a soldier tried for that offence).
3. Whether he be under any sentence at the present time.
4. His general character.
5. His age.

6. The date of his attestation.

7. Service allowed to reckon towards limited engagement.

8. Any decorations or honorary rewards he may be in possession of.

Q. R., Appendix B.

9. In cases of desertion the question is to be put "Did he surrender, or was he apprehended?"

It is no longer necessary to warn a prisoner that his former convictions will be brought in evidence against him.

A. W. 187.

Duly authenticated civil convictions as well as military ones may be produced against him. Any conviction may be brought up, even before he entered the service, if you have them,—*e. g.*, in the case of a man who enlisted twice, convictions during his first period of service could be brought against him.

Previous convictions how proved. A. W. 155. A. W. 156. M. A. 39.

The Court Martial, or defaulter book, or a certified copy therefrom, is good evidence of a previous conviction. Civil convictions may be proved from the Court Martial, or defaulter book, if entered in them, or by a certificate from the civil court, or by certified copies of these documents. According to the form in the Queen's Regulations, it is the certified copy only which is to be produced to the court.

Q. R., Appendix B.

Evidence of former instances, of drunkenness, according to Article of War 71, is to be given by the officer whose duty it is to prove former convictions, &c., and in the following terms:

Q. R., Appendix B.

"On reference to the.....defaulter book now laid before the court, it appears that the prisoner's name has been recorded therein for the crime of drunkenness.....times since his enlistment." The court merely record this evidence; a certified copy of the entries in the defaulter book is no longer needed.

The certified copies which are to be received mentioned above are always read out in open court, signed by the President and Deputy Judge-Advocate, and attached to the proceedings, being also lettered to distinguish them.

The prisoner may figure in these certificates under different names, having assumed aliases and false names. This is no matter so long as the court be satisfied of the identity of the prisoner with the person therein described.

Character is to be given *generally*,—*i. e.*, as "very good," "good," "fair," "indifferent," "bad," or "very bad," but is not to go into any particulars. Such answers as "A steady man, but useless as a non-commissioned officer;" "A good soldier, but too fond of drink," are forbidden by the Queen's Regulations, which direct that the terms above enumerated are to be adhered to. No evidence of character is taken in the case of an officer. Q. R., VI, 36.

In trials by General Court Martial under Mutiny Act 101, the certificates usually attached to the proceedings are not required; and no enquiry should be made, after conviction, as to the prisoner's former convictions or general character. The reason of this is, that the sentence is passed under the Indian Penal Code, and not under the Mutiny Act. Exceptional case. Memo. by J. A. G., Bombay, No. 1069, 30th Dec., 1871.

For non-commissioned officers and soldiers a medical certificate has to be attached to the proceedings, stating whether the prisoner is fit or unfit for solitary imprisonment and hard labour (and, on active service, corporal punishment). Also, on a trial for desertion, whether the man is fit or unfit for the service. Q. R., VI, 61. H. G. G. O., 100, 1st Nov., 1870. H. G. G. O., 25, 1st April, 1873. India G. O. C., 568, 28th Sept., 1870.

Warrant officers are exempt from medical examination previous to trial.

It may be observed that, in some cases, no deliberation is necessary; as for certain offences certain punishments are peremptory, and the court, having found the prisoner "guilty," have no option but to award the prescribed punishment. They are nearly all confined to officers only, and the peremptory punishment is that they *must* be cashiered. For these see Appendix C. The others are—

A. W. 34. 1. MISCONDUCT ON THE PART OF A CHAPLAIN. Punishment, to be discharged.

M. A. 60. 2. UNLAWFULLY DETAINING A SOLDIER'S PAY FOR ONE MONTH.

The officer so doing is "to be discharged from his employment, and to forfeit £100," by sentence of Court Martial; and the informer, if a soldier, shall, if he demand it, be discharged from the service.

☞ NOTE.—*This is the only peremptory punishment not mentioned in the Articles of War as well as in the Mutiny Act.*

A. W. 7. 3. COMMANDING OFFICER NOT CRYING DOWN CREDIT.

To be suspended for three months, during which his pay to be applied towards paying any debts contracted by soldiers under his command.

☞ NOTE.—*This is the only case of "suspension of an officer," and could not be given by sentence of a Court Martial, because that is forbidden by Article of War* 125.

Each member, notwithstanding that he may have voted for "not guilty," must vote for punishment, if the court have found the prisoner "guilty," and should award such punishment as the offence merits. Some punishment *must* be awarded, except, perhaps, under Article of War 104, which differs from all others in leaving punishment optional.

The Deputy Judge-Advocate is responsible that the sentence is properly worded, and that it is within the powers of the court to award.

The court should decide the nature of the punishment first, afterwards the amount. A sentence of death requires a majority of two-thirds. M. A. 8; A. W. 116.

If the prisoner be already undergoing sentence for previous offences, the following words should be added to the sentence: "*the imprisonment is to commence at the expiration of the punishment to which the prisoner has been previously sentenced.*" Q. R., Appendix A, 15.

If the medical certificate states that he is unable to undergo hard labour, the court may award "*imprisonment, with such labour as, in the opinion of the medical officer of the prison, the prisoner may be equal to.*" Imprisonment is always to be stated in *days*. Do. do., 12.

In India (save in the Hills) local orders forbid solitary confinement being awarded during April, May, June, or at any time of unusual heat. Bengal Regulations.

Prisoners intended for commitment to Millbank should not be sentenced to solitary confinement, as that prison is conducted on the separate system. Q. R., Appendix B.

Reduction of non-commissioned officers. State 'to the ranks,' and such sentence should precede a sentence of imprisonment, or corporal punishment, or of fine for drunkenness. Reduction is not awarded from acting or lance rank. Trumpeters and shoeing smiths are not reduced; they are ordered 'to revert to the position' of gunner, driver, or private dragoon.

NOTE.—*An Army schoolmaster may be sentenced to dismissal or loss of service, but not to reduction; a non-commissioned officer, who is not an Army schoolmaster, may be reduced, but cannot be dismissed, except under Mutiny Act* 17.

The court has nothing to do with the manner or place of carrying out the punishment.

If prisoners are jointly tried, each should be sentenced separately.

The sentence should give the number, name, and rank of the prisoner as stated in the charge, and the sentence is to be briefly noted in the margin. The proceedings are to be signed by the President, and countersigned by the Deputy Judge-Advocate. This is to be done before adjournment. A space of at least half a page is to be left for the remarks of the confirming officer.

A. W. 168. It is to be noted that every soldier—

1. *Convicted of*—
   (*a.*) Desertion;
   (*b.*) Maiming himself or other soldier, or causing himself to be maimed;
   (*c.*) Tampering with his eyes;
   (*d.*) Felony, or crime which would be felony in England; or—
2. *Sentenced to* penal servitude; or—
3. *Who has been discharged* with ignominy;

provided that his conviction under (*a*), (*b*), *or* (*c*), *be confirmed*,—

forfeits thereupon all claim to good conduct pay, and pension on discharge, which might have otherwise accrued from his *former* service, and also all medals and decorations he may be in possession of, together with the annuity or gratuity thereto appertaining.

A. W. 117. A soldier convicted of any crime by a General Court Martial or District or Garrison Court Martial *may* be sentenced to the forfeitures prescribed in Article of War 117.

Q. R., VI, 88. Imprisonment and penal servitude count from the date of the President's signature, and if the

sentence be revised and the proceedings signed again, it is from the date of *the first* signature that it begins to count. A. W. 139.

Although, for aggravated offences, two years' imprisonment may be given by General Courts Martial and District or Garrison Courts Martial, yet, for all ordinary offences, it should not exceed six months. Q. R., VI, 21.

Any recommendation to mercy, or remarks by the court on the conduct of the prosecutor or witnesses, should be made in a separate letter.

The proceedings are then forwarded through the proper channel to the confirming officer.

At Home, a General Court Martial is forwarded by the Deputy Judge-Advocate to the Judge-Advocate General, who lays it before the Sovereign. *Abroad*, to the confirming officer direct. Q. R., Appendix A, 22.

India.—A General Court Martial is forwarded by the Deputy Judge-Advocate to the Judge-Advocate General, to lay before the Commander-in-Chief. A District or Garrison Court Martial is forwarded by the President to the Divisional Deputy Judge-Advocate to lay before the confirming officer. A District or Garrison Court Martial on a warrant officer is sent by the President to the Judge-Advocate General, as it has to be confirmed by the Commander-in-Chief of the Presidency. Bengal Regulations.

LECTURE X.

CONFIRMATION.

THE proceedings are then forwarded to the confirming officer, who may either confirm, refuse to confirm, or return them for revision of finding or sentence, or both.

Q. R., Appendix A, 16.

His reasons for requiring a revision should be fully stated in the proceedings. In case he orders a revision, the court would re-assemble, and read the order for re-assembly and the remarks of the confirming officer (the latter in closed court). If any member be unavoidably absent, a certificate explaining the reason must be read, marked, signed, and attached to the proceedings, and if the legal minimum still remain, they can go on.

The court may adhere to their former finding and sentence; but if not, if they alter the finding, they must formally revoke *both* finding and sentence, and pass a new finding and a new sentence, although the finding may have been altered only on some trifling or technical ground, and although the new sentence may be, word for word, the same as the former sentence.

It will not do to alter the finding, and then state that they "adhere to their former sentence." If they did so, the whole sentence would become null and void; they could not be assembled again to correct their error, for *a court cannot re-assemble for revision more than once;* and the man could not be tried again, inasmuch as he had once been *convicted.* He would thus escape all punishment, except that if the finding were confirmed, it would count as a legal conviction, and be recorded against him, and would carry with it such

M. A. 14; A. W. 163.

M. A. 39; A. W. 163.

forfeitures as certain convictions always necessarily entail.

No fresh evidence can be taken at revision, except that, if the original finding had been "not guilty," and the revised finding were "guilty," the evidence which is always taken after conviction, and before sentence, may be then taken, *viz.*, former convictions, character, &c., evidence of former instances of drunkenness on a trial for that crime, and, on a trial for desertion, evidence as to whether he surrendered or was apprehended.

If the confirming officer refuse to confirm, the trial falls to the ground, and no record of it is made against the prisoner. The only effect is that the prisoner cannot be tried again for that offence. After confirmation the proceedings of all General Courts Martial and District or Garrison Courts Martial go on to the Judge-Advocate General. He alone has power to *quash* a Court Martial. Should he do so, the whole proceedings become null and void, and any record of the trial made against the accused is to be erased.

Completion of proceedings.

After the trial is over, the court should look over the proceedings to see that they are in every respect correct. Erasures and interlineations are forbidden, but any small corrections there may be must be initialed by the President.

The questions and answers must be numbered in the margin as Q. 1, or A. 1, &c.

The pages are to be numbered in succession; quarter margin to be left, and in it references inserted to the subject-matter,—*e. g.*, "first witness for prosecution," "defence," &c. The finding is noted in the margin, and the sentence briefly,—*e. g.*, "imprisonment, hard labour, 168 days." *In India*, proceedings and all annexures must be in

duplicate, except for Regimental Courts Martial. Regimental Courts Martial are to be written on both sides of the paper; other courts on one side only. The separate sheets are to be fastened at the left upper corner by a loose loop of silk, or thread, clear of all writing. Finally, the proceedings are docketed longitudinally,—*i. e.*, folded longitudinally, and a separate blank sheet added, and on the back of this the docket placed thus:

"GENERAL (OR DISTRICT) COURT MARTIAL.

No. 1134, PRIVATE WILLIAM SMITH,
112*th Regiment of Foot*,
Tried at Umballa on the 10th January, 1874."

The docket to be on a separate sheet, *not* on the back of the last page of the proceedings.

The charge, as sent by the convening officer to the court, should be folded *separately* and enclosed with the proceedings.

A. W. 123. *In any of our Colonial Possessions* no sentence of death can be carried into effect until it shall have been approved by the Civil Governor. Colonel Maisey states that India is not a "Colonial Possession," and that therefore such sanction is not necessary in India.

Maisey, p. 331 note.

M. A. 101. For offences, however, tried under Mutiny Act, 101, a sentence of death on any person, or of penal servitude on an officer, must be sanctioned by the Governor-General in Council, or by the Governor of the Presidency in Council, before it can be carried into execution.

The confirming officer may sign as "approved and confirmed," [*the word 'approved' is not necessary, except in the case of a Detachment General Court Martial*] or "confirmed" only; or "con-

firmed but not approved;" or "the finding is confirmed, but the sentence is *not* confirmed" [*this would be done where the sentence was illegal*], or "confirmed with the exception of..... ;" or lastly "not confirmed."

The confirming officer may take into consideration any extraneous information,—*e. g.*, he may make enquiries as to any statement made by the prisoner to see if it be true.

The confirming officer may *commute*, *mitigate*, or *remit* the whole or part of the sentence, under the following restrictions, *viz.:*

DEATH may be commuted to penal servitude not less than five years', or to such period of imprisonment with or without hard labor, or solitary confinement, as may seem meet to the confirming officer, not exceeding two years. M. A. 16.

In case of a sentence of death under Article of War 143, the Queen reserves to herself the power of commuting it to penal servitude or to such period of imprisonment, with or without hard labor, as she may think fit. [*Note.—No solitary confinement.*] A. W. 143.

In case of a sentence of death under Article of War 145, the confirming officer may commute it to penal servitude, or to imprisonment *not exceeding two years*, with or without hard labor. [*Note.—No solitary confinement.*] A. W. 145.

PENAL SERVITUDE may be commuted to imprisonment for not more than two years, with or without hard labor and solitary confinement. M. A. 20.

Penal servitude under Mutiny Act 101 can be commuted by the confirming officer to imprisonment with or without hard labor for such period as to him shall seem fit. [*Note.—No solitary confinement.*] M. A. 101.

M. A. 24. CORPORAL PUNISHMENT can be commuted, 50 lashes to 42 days, or mitigated to 25 lashes, to be inflicted in the prison, and 20 days' imprisonment with or without hard labor and solitary confinement. If solitary confinement form part of such commuted punishment, it must not be for more than seven days at a time, with intervals of seven days between each such period.

M. A. 25. CASHIERING can be commuted (*only by the Queen*) to reprimand, or loss of rank, army or regimental, or both.

☞ NOTE.—*There is no provision for officers of the Indian Staff Corps getting loss of service when a sentence of cashiering is thus commuted.*

M. A. 21. Forfeitures, when combined with penal servitude, may be mitigated or remitted, if the sentence be commuted to imprisonment.

A confirming officer cannot make other changes such as changing solitary confinement to hard labor and *vice versa.*

Officers who confirm minor courts cannot commute punishment at all, except in the one case of corporal punishment. Any confirming officer may remit the whole, or part of the sentence, *except forfeitures*, which he has no power to remit, except in the one case mentioned above.

A. W. 134. STOPPAGES OF PAY may be remitted—*At Home*, by the Commander-in-Chief, with the concurrence of the Secretary of State for War. *In India*, by the Commander-in-Chief and Government of India, or by Commander-in-Chief of Presidency and the Local Government. Generals commanding abroad can suspend execution of the sentence, and refer the proceedings Home. This power is given to them in their warrants.

M. A. 100. The proceedings of a Court Martial on an officer or soldier of Her Majesty's Indian forces may be

suspended by the Government of any Indian Presidency.

EXECUTION OF SENTENCE.

Officers and soldiers acquitted are released, as soon as possible, after the finding has been confirmed. A soldier gets his back pay, less six pence a day for subsistence during confinement.

SENTENCE OF DEATH. The court only sentence to death by shooting or hanging. A soldier would be shot for a military crime, and hanged for murder or other civil capital offences.

PENAL SERVITUDE. The necessary steps are stated in the Mutiny Act, *viz.:* M. A. 18, 19.

In the United Kingdom, the Commander-in-Chief or the Adjutant-General, or the Secretary of State, makes application to any Judge of the High Court of Justice in England, or of the Queen's Bench, Exchequer, or Common Pleas, or other superior court in Ireland, who makes out the necessary "Judge's order," and the man is at once handed over to the civil custody.

India and the Colonies. The Commander-in-Chief of the presidency or colony, or the Adjutant-General, makes application to some Judge of the chief civil court of the presidency in India, or to a Judge of any court in the colony, for an order for penal servitude and intermediate custody. This being notified to the Governor of the presidency or colony, he orders it to be carried out. In the meanwhile the man remains in *military custody.*

At Home, the Judge sends him straight off.

Abroad, the Judge's order goes through the civil Governor.

Out of British Territory, the officer commanding may make out an order in writing for his penal servitude and intermediate custody.

If a man come home as a military convict, and the Judge's order made out abroad be not forthcoming, the Secretary of State may make the necessary order.

The proceedings of a Court Martial were once lost after being confirmed, but before they were promulgated. It was decided that, in the absence of the best evidence, the next best was sufficient, which was furnished by a memorandum which had been made by the confirming officer, and the deposition of the president as to the sentence, and the sentence was carried out.

If any person prosecute any person, such as the president, or a member of a Court Martial, for anything he may have done in pursuance of the Mutiny Act, he must bring the action within six months; and if the complainant lose the verdict, or be non-suited, he has to pay treble costs.

The original proceedings of all General Courts Martial and District or Garrison Courts Martial are sent to the Judge-Advocate General, by whom they are examined. A monthly return of all Courts Martial is made up to the first of each month, containing the names of all men who have been tried by Courts Martial during the preceding month. This is sent to the general officer under whose orders the corps is serving, and goes on to the Adjutant-General. It gives all information about the prisoner, his trial, sentence, &c.

In the column of remarks it must be noted, if permission be given to try a grave offence by a lower court than it would otherwise demand. These returns are rigidly gone through at head-quarters, and any irregularity is sure to be

detected. This serves as a useful check upon minor Courts Martial.

Imprisonment. The place of imprisonment is, in the case of a General Court Martial, appointed by "the officer commanding the district, garrison, island, or colony;" in other courts, by the officer who confirms the proceedings; if no place be specified, by the commanding officer.

Soldiers who are to be discharged at the end of their imprisonment should always be sent to civil gaols.

The committal is made out on a printed form [W. O. 219]. The imprisonment counts from the date of the president's signature to the original proceedings. The date on which the prisoner is released counts as one day.

The officer in charge of a gaol in any part of British territory is bound to receive any European prisoner on delivery of a warrant, and to keep him "with hard labor or without, &c., according to the sentence of the court." M. A. 30, 34.

At Home the Secretary of State for War, in India the Governor-General in Council, are empowered to establish military prisons; and they can appoint, or authorize Generals commanding to appoint periodical military visitors of such military prisons. It is a capital offence for a soldier to assault such a visitor in the execution of his office. Men sentenced to less than 42 days are usually confined in cells, either garrison or regimental. M. A. 15; A. W. 37.

If it be desired to remove a military prisoner from one place of confinement to another, or if he be required as a witness for a Court Martial or to be tried by one, an order must be given—

At Home, by the Commander-in-Chief, the Adjutant-General, the officer who confirmed the proceedings, or the officer commanding the district.

Abroad, by the officer commanding, or by the Adjutant General.

India, by the officer commanding the Presidency.

If the prisoner be moved from one prison to another, a new order must be made for his committal to the new prison by the officer who gives the order for his removal.

FINES. STOPPAGES.

A. W. 77; Q. R., VI, 16. Fines for drunkenness are levied by a stoppage of not more than 4 pence a day. [In Colonial corps, not more than 2 pence a day.]

M. A. 17. To refund loss or damage when convicted by General Court Martial of offences against Mutiny Act 17, the offender, if retained in the Service, may be put under stoppage of half his pay and allowances.

A. W. 132. A soldier, after paying for messing, and washing, and stoppages, must be left one penny a day clear.

LECTURE XI.

FRAMING CHARGES.

THE charges are framed by the commanding officer who investigated the offence, but these charges are liable to revision by the authority which orders the Court Martial. If there be a Deputy Judge-Advocate, he revises the charge.

Great care must be taken in framing them, both to see that no important point be left out, and also that nothing be inserted in the charge which is not likely to be supported by the evidence. Horse Guards Order, 7th May, 1801, says, "To prefer accusations which cannot be maintained, at the same time that the practice is highly inconvenient and injurious to the Service, reflects much disgrace on those who bring them forward."

Charges brought before a Court Martial are not bound by the technical formalities which prevail in other courts of law, but they must be sufficiently specific to enable the prisoner to know what he has to answer, and the court to know what they have to enquire into.

J. A. General on trial of Colonel Quentin.

The Queen's Regulations contain forms of charges applicable to a large number of the commonest crimes, and it is ordered that charges are to be specific "*in names, date, and places.*" If a non-commissioned officer or soldier, the prisoner's regimental number, rank, and regiment, Christian and surnames must be stated. When the prisoner is charged with any loss, or damage, the value must appear in the charge, and be proved in evidence. When the loss or damage

Q. R., Appendix C.

Q. R., Appendix A, 3.

is of articles of kit, the value of which is fixed by regulation, the value shall *not* appear in the charge ; but when the value depends on the length of time the article has been in use, as in the case of a great-coat, the value must be so stated, and the time it has been in wear must be proved in evidence.

A mistake in name will not invalidate the trial, if there be no mistake about the prisoner's identity. The name should be that by which the man was attested, and by which he is known in the regiment.

The charge must be worded so as to bring it directly under the clause of the Mutiny Act or the Article of War applicable to it, but should not quote it. This is particularly necessary in charges of disgraceful conduct. The charge should be so stated as to show that the conduct charged *is* an offence,—*e. g.*, " receiving stolen goods ;" it should be "*feloniously* receiving..... ...*knowing the same to have been stolen.*" Forgery must be "with intention to defraud." Writing another man's name is not forgery, unless with such intention. There is no particular Article of War for forgery, but it could be tried under Article of War 81, "disgraceful conduct," as an offence of a fraudulent nature. When money be the matter stolen, the lump sum may be stated, there is now no need to distinguish the amount in gold, notes, etc. Money stolen out of the possession of a person entrusted with it, may be described as stolen *from* that person,—*e. g.*, money stolen from a paymaster, or pay-sergeant.

See Q. R., Appendix A.

Q. R., Appendix C, 29.

Time and place must be stated correctly in the charge. With regard to time, it need not be more exactly fixed than is necessary for the prisoner's defence, as when the essence of the offence is, that it occurred at a particular time,—

e. g., in case of a sentry sleeping on his post, you must state "between the hours of..... and....," *viz.*, those during which he was posted as sentry; but you should not state the time more precisely than this. In other cases the day, "on or about the 12th August, 1875," is quite sufficient.

When the offence consists of "words used" the words must be set out at length, and as accurately as possible. It is usual to insert the words "in substance, and to the effect following."

All vague charges must be avoided, and attempts to try an act which is not clearly against the military code. Many acts which might well be the subject of civil actions, are not military crimes. Simple offences, which might be disposed of by the commanding officer, are not to be tacked on as extra charges,—*e. g.*, insubordination, and having neglected to clean his rifle; desertion, and being improperly dressed in the streets.

If an anonymous letter be the subject of the charge, the obnoxious passage, or, if necessary, the whole letter, must be given in the charge. An officer must not be tried for "scandalous conduct," nor a soldier for "disgraceful conduct," without clearly specifying the fact or facts upon which such allegation is grounded. *Vide the cases of Ensign Imlach, and Private Macnamara quoted in Simmons.* Simmons, 411, 413.

The charge may be altered by the officer convening the court at any time *before arraignment;* and at any time *before the court is sworn*, he may prefer additional charges. The court is only sworn as to "the matter *now* before you;" if ordered to try any subsequent charge, they should finish the trial on the original charges, and then be sworn again, and try the prisoner on the later charge.

Several prisoners who have committed an offence in concert may be tried together in all cases (except four mentioned below) in which they do not desire one another's evidence for their defence. If they do, they would apply to be tried separately, and, in the interests of justice, it should be granted, as, if tried collectively, the evidence of one could not be given for the others.

The words 'instant,' 'ultimo,' should never be used in a charge, but the month should be stated. If the offence be one not expressly specified in any section of the Mutiny Act, or article of the Articles of War, whether it be an action or an omission, the charge must be worded so as to bring it under Article of War 105,—*e. g.*, making a false statement to commanding officer. If the false statement were a false confession of desertion, try under the latter part of Article of War 46, but, for any other false statement, try under Article of War 105.

If any crime which is accompanied with drunkenness be tried by General Court Martial or District or Garrison Court Martial, then the drunkenness is to form a separate charge (*vide ante*, "Powers of a commanding officer."

☞ *Never charge a soldier with "having been found drunk;" the offence is being drunk, not having been found out!*

Q. R., Appendix C, 9.

If insubordinate language accompanied an act or acts of violence, it should not form the subject of a separate charge, but be stated as a circumstance in the charge alleging the violence.

Offences not to be jointly charged.

Soldiers are not to be jointly charged for the following offences, *viz.:*

(*a.*) Desertion and absence without leave.
(*b.*) Drunkenness.
(*c.*) Malingering.
(*d.*) Perjury.

DISOBEYING THE LAWFUL COMMAND OF A SUPERIOR. The command must be given in the charge.

ALTERNATIVE CHARGES.—A man may be tried on alternative charges when they refer distinctly to the same offence, but may not be tried on a disjunctive accusative charge,—*i. e.*, for two crimes of which he could not have done both, but pretty surely did one. It is irregular to frame charges in the disjunctive, so as to include two offences; thus, in a case of stealing or feloniously receiving, *two* charges, one for each offence must be preferred; and charges under Article of War 102, for making away with, or losing by neglect, articles of kit, are to have a separate charge for each issue.

NOTE.—*Of course a prisoner cannot plead "guilty" to all the alternative charges, as, if guilty of one, he must be innocent of the others. Similarly, the court can only convict on one of several alternative charges.*

In 1867 a storekeeper was convicted, and sent to gaol for "embezzling or fraudulently misapplying." The Queen's bench released him "because the charge and conviction were in the alternative, without any certainty as to either of the two charges in the disjunctive." Quoted in Simmons, 396.

A Court Martial differs from a civil court in this, that a prisoner may be tried at one time for several totally distinct offences; each, however, must form the subject of a separate charge. This would not apply to those cases where civil offences are tried by General Court Martial under Mutiny Act 101, for the court is then acting as a civil court, and would be guided by the customs of such courts.

If violence be used to a superior officer *in the execution of his office*, it must be so stated, otherwise the crime will not come under Article of

War 37, but under Article of War 41, for which death or penal servitude are *not* awardable.

When *intention* enters into the offence, as it is laid down in the Mutiny Act or Articles of War, it is best to use the very expressions adopted by them, such as 'treacherously,' 'intentionally,' 'wilfully,' 'knowingly,' etc.

Maisey, p. 182. A form of charge with the heading, etc., is given in Colonel Maisey's work; the heading comes first, then comes the charge itself, and, lastly, the staff officer or the convening officer signs it 'by order,' stating by what court the offence is to be tried. *The charge proper is merely the centre part*, and this should be as nearly as possible according to the forms in Queen's Regulations, Appendix C.

Q. R., Appendix B, 2. The charge, therefore, as sent by the convening officer to the court, would stand thus:

Charge preferred against No. 1121, Private Joseph Hookem, of the 110th Regiment of Foot.

CHARGE.

Q. R., Appendix C, 10. *Having deserted from the* 110*th Regiment at Umballa, on or about* 10*th January*, 1876.

For trial by District Court Martial.

By order of

Commanding Sirhind Division.

L. F., *Lieut.-Col.*,

Asst. Adjutant Genl.

Umballa, — May, 1876.

LECTURE XII.

CRIMES AND PUNISHMENTS.

A crime is an action which the law has forbidden, and to which it assigns a punishment. To render it punishable, however, the commission of the action is not alone sufficient—it must be wilful and intentional,—*i. e.*, it must be— A crime defined.

1. Done purposely.
2. Done with intent to bring about the results which ensued.

Therefore, to be a crime, there must be a specific criminal intention; this is generally called 'malice.'

Where this intention is not expressed by the word describing the crime, such word must be qualified,—*e. g.*, 'stealing' *does* express unlawful intent, but 'receiving stolen goods' does *not*, as it might have been done unwittingly; therefore charge with 'feloniously receiving, knowing them to have been stolen.'

Where the action is felonious, a person is answerable for the consequences, even though not intended,—*e. g.*, in the Clerkenwell explosion, some men placed a barrel of some explosive compound against a prison wall in the street, lit the fuze, and ran away. Several people walking in the street were killed or hurt. No doubt, the criminals did not intend to hurt these individuals, but they were liable, and were tried and convicted, for these results of their unlawful proceedings. Consequences of felonious action.

A certain amount of culpable negligence is held to constitute 'evil intent,' and makes the act Culpable negligence.

criminal, though in a lower degree,—*e. g.*, neglect on the part of a signal-man on a railway.

Wilful omission.

WILFUL AND INTENTIONAL OMISSION is, in the eye of the law, equal to wilful and intentional commission, and is equally criminal and punishable.

I shall now proceed to remark on particular crimes, following, as nearly as possible, the order in which they occur in the Articles of War. They begin at Article of War 31, and end at Article of War 105

A. W. 31—34. These call for no remark.

A. W. 35. PERJURY.—Punishment : officer, cashiering, (peremptory) ; other person, such punishment other than death or penal servitude as a General Court Martial or a District or Garrison Court Martial may award.

Perjury defined. *Perjury is the taking of a wilful false oath by one, who, being lawfully required to depose to the truth in any judicial proceeding, swears, absolutely, in a matter material to the point at issue.*

The law takes no cognizance of any false oath, unless it be sworn in a court of justice, or before some magistrate, or other public officer, who has legal power to administer an oath.

It must be a '*wilful false oath.*'

The witness must have sworn '*absolutely.*' He, who swears that 'he thinks,' etc., cannot be found guilty of perjury in respect of such oath, unless it were that he swore that he 'believed' a thing to be fact, which you can prove that he *knew* to be false. Lastly, the false matter deposed to must be material to the point at issue ; if it be not, it does not constitute perjury. A case came under my observation, in which a woman (a witness in a case of assault) was asked, in cross-examination, whether she were married to the

man with whom she was living ; she swore that she was. She was afterwards prosecuted for perjury, and it was proved that he was not her husband, but the Judge directed an acquittal, on the ground that the false statement was not material to the point at issue,—*viz.*, the assault.

Soldiers prevaricating, or making false statements, though immaterial, may be tried under Article of War 105.

For charge for perjury, see Queen's Regulations. Q. R., Appendix C, 47.

Observe that under the English Articles of War persons liable to them can be tried for perjury committed before any court or person who has authority to administer oaths and declarations.

Under the Indian Articles of War this is *not* the case; they can only try perjury committed before a Court Martial or other military court competent to administer oaths.

As a matter of fact, however, perjury before a civil court would always be tried before a civil court in *either* case.

Perjury how proved.

To prove perjury you must prove—

A.
1. The taking of the oath.
2. That it was before a legal court or authority.
3. The matter sworn to.
4. That it was material to the point at issue.

B.
5. That the statement was false.
6. That the prisoner knew it to be false.

To prove A, the first part, *one* witness, or the production of the proceedings of the Court Martial, would be sufficient.

To prove B, the second part, *two* witnesses are required, (or one witness corroborated by material

and independent circumstances), otherwise it would be merely one man's oath against another's.

In civil law there is a crime called "subornation of perjury,"—i. e., inducing another person to take a false oath by threats or bribes. This is not specifically mentioned in the Mutiny Act or Articles of War, but can be tried and punished under Article of War 105.

FOR WHAT CRIMES CAN DEATH AND PENAL SERVITUDE BE GIVEN BY SENTENCE OF A GENERAL COURT MARTIAL?

By Article of War 189, no person subject to the Mutiny Act can be sentenced to death or penal servitude, except for crimes declared expressly by the Mutiny Act to be so punishable.

By Mutiny Act 1, no person *in the United Kingdom or British Isles* shall be so punished, except for crimes expressly made liable to such punishment by the Mutiny Act.

The whole of the crimes so punishable are enumerated in the Mutiny Act 15 and Mutiny Act 17. No crimes not there mentioned can be so punished without going contrary to Article of War 189, except, indeed, civil crimes tried under Mutiny Act 101.

Notwithstanding this there are certain crimes enumerated in Article of War 55 and Article of War 58, *viz.:* "occasioning false alarms on service;" "doing violence to bringers of provisions for the army;" "breaking into a cellar to plunder," etc.,—for which the punishment of death or penal servitude is laid down, and which are no where mentioned in the Mutiny Act.

In the United Kingdom, death or penal servitude could not, under any circumstances, be given for these, as Mutiny Act 1 prohibits it.

Abroad, there is nothing in the Mutiny Act *against* it, but, even there the two Articles of War are contradictory. However, as the same authority makes it legal by Articles of War 55 and 58, which makes it illegal by Article of War 189, it is considered that it might be given abroad, on active service, but, probably, if it were considered desirable to put these articles in force, Article of War 189 would be temporarily suspended by the Sovereign's order.

For list of crimes which the Mutiny Act renders liable to death or penal servitude, see Appendix E.

MUTINY AND INSUBORDINATION. A. W. 36.

Mutiny is against military authorities.

Sedition is against the civil authorities.

Mutiny is a joint act, or one tending to produce joint action, as of a number of people conspiring together. *One* man cannot mutiny.

An individual's act is called 'insubordination,' and is punishable under the articles mentioned in the margin. A. W. 37. A. W. 38. A. W. 41.

For mutiny, you must show an intention on the part of the offenders to rise against constituted authority, and break their allegiance as soldiers.

"Strike or offer violence to superior officer in the execution of his office." A. W. 37.

Superior officer includes all non-commissioned officers.

'Offer violence,'—any threatening act or gesture amounting to an attempt to use violence, but, if it were only a threat of future violence, and no attempt were made, the offence could not be tried under this clause, and the man is not liable to death or penal servitude. For an offer of violence the officer must have been within

striking distance. A man's aiming at you out of a barrack window with a loaded rifle *is* an offer of violence, but if he shook his fist at you out of a window on an upper storey it would not be such. Raising his fist to strike in the orderly room would be an offer of violence.

[The Indian Articles give a wider acceptation, and make any gesture or preparation for assault equivalent to the assault.]

Also the officer must be "in the execution of his office." This has been defined to be "with his regiment or any part of it," but if the officer were in plain clothes, you must prove that the soldier knew that he *was* an officer.

The Articles of War evidently intend that a superior is *not* always in the execution of his office, or where is the difference between Article of War 37 and Article of War 41; and circumstances may arise when the non-commissioned officer is manifestly *not* so. Any way, unless these words be inserted in the charge, sentence can only be awarded under Article of War 41.

Provocation is not by law recognized as justifying an act, but, if proved, it would, of course, influence the court in their sentence.

A. W. 38. DISOBEYING THE LAWFUL COMMAND OF SUPERIOR OFFICER. If an isolated act, it would be treated as insubordination. If previously agreed upon by a number, as mutiny.

The precise nature of the order must be stated in the charge.

Meaning of words "Lawful Command." '*Lawful Command.*'—This is inserted to prevent the inferior being ordered to do an act which would render him liable to civil punishment,—*e. g.*, an officer engaged in a broil calling on soldiers passing to take his side. The meaning is that a

man is not bound to commit an unlawful act because his military superior tells him to do so ; it is not intended to enable an inferior to argue whether a commanding officer had a right to give an order or not. This mistake was made by the Marines at Chatham, who persisted in preaching in the streets after their commanding officer had ordered them not to do so.

This article is intended to meet *direct* disobedience of an order; it is not intended to meet cases which come under "neglecting to obey orders," which come under Article of War 75.

It is no matter whether the order be given personally, or in writing, or by a staff officer.

These offences are, practically, always tried by District or Garrison Court Martial in the case of a soldier. A. W. 39, 40.

Don't confuse this article with Article of War 37. This one applies to cases where the officer is *not* in the execution of his office, or where the personal violence was not used or 'offered.' Observe that the insubordinate language must be used '*to*,' not '*of*' the superior officer; insubordinate language *of* him, in his absence, could only be tried under Article of War 105. A. W. 41.

The insubordination, whether of act or of word, must be precisely set forth in the charge. For forms of charges for these crimes, see Queen's Regulations. Q. R., Appendix C, 1 to 9.

LECTURE XIII.

DESERTION, AND ABSENCE WITHOUT LEAVE.

A. W. 42 to 50.
M. A. 15, 34 to 36, 50, 54, 57, 81.

DEFINITION. *Desertion is absence without leave without the intention of returning.*

The length of the time of absence has nothing to do with it. A man may be absent for several years, and yet not be a deserter, or he may have only got a few yards from the barrack gate, and yet be one. There is only *one* case in which he can become a deserter without being absent without leave, and that is if he enlists in another regiment before his service in the first regiment has expired. This is declared by the Articles of War to, of itself, constitute desertion.

A. W. 42.

In all other cases, however clear his intention to desert, he cannot be convicted of the crime of desertion, unless you prove absence without leave,—*e. g.*, a man on furlough, or whose pass has not expired, *cannot* desert, except by enlisting into another regiment.

M. A. 15.
A. W. 44.
Appendix E.
Appendix C.

'*Attempting to desert*' is now punishable in the same way as desertion. The Mutiny Act sanctions death as an extreme penalty, and the Articles of War direct that an officer convicted 'shall be cashiered.'

M. A. 50;
A. W. 45.

Any non-commissioned officer of the Volunteer Permanent Staff, or Militia man, who enlists in the regular army, is liable to trial for desertion.

A. W. 49.

A soldier may be tried for deserting from a regiment into which he illegally enlisted, so that any number of charges for desertion may be made the subject of a single arraignment. A

separate charge is to be made for fraudulently obtaining bounty and a free kit.

A man *may* be tried for desertion, no matter how short the time of his absence. A. W. 43.

ABSENCE NOT EXCEEDING 5 DAYS *may* be disposed of by commanding officer. A. W. 50.

ABSENCE NOT EXCEEDING 21 DAYS *may* be tried by Regimental Court Martial. A. W. 136.

ABSENCE WITHOUT LEAVE OVER 21 DAYS. In this case a Court of Enquiry (three officers) takes evidence *on oath* respecting the absence and deficiency of kit; their declaration is to be recorded in the regimental books. If the man does not afterwards surrender or be apprehended, this *record* has the legal effect of a conviction for desertion. If he does surrender, or be apprehended, this record, or a copy of it duly certified, is admissible, on his trial, to prove such absence, or deficiency of kit. If he be tried, it must be by a District or Garrison Court Martial at least, unless the officer who would have convened such court give a written sanction for the offence being tried by Regimental Court Martial. A. W. 167.

NOTE.—*It is the record made in the books, or copy of it, not the original proceedings, which is to be produced in evidence. As soon as the declaration has been recorded in the books the original proceedings are to be destroyed.*

CONFESSION OF DESERTION. M. A. 37, 50.

A. If the man be serving and confess desertion, he is to be taken before the commanding officer, who will make a record of his confession in the regimental books, and sign it. If no evidence of the truth or falsity of his statement be forthcoming, the commanding officer will write to the commanding officer of the regiment from which the man states that he deserted, A. W. 40, 47

Man serving confessing desertion.

and his reply is laid down to be sufficient proof of the truth or falsity of such confession. He is *not* to be made a prisoner, but to continue serving whilst these enquiries are made. If his statement be false, he may be tried under the latter part of Article of War 46 by District or Garrison Court Martial, on a charge of making a false statement to his commanding officer, and, if convicted, *may* be sentenced, in addition to imprisonment with or without hard labour *(but without solitary confinement)* to all the forfeitures which he *must* have incurred had he been convicted of desertion.

If his confession be true he may be tried, or the Commander-in-Chief at home, or the commanding officer of a foreign station, or the Commander-in-Chief of a Presidency in India, may dispense with his trial, and order him to serve in any regiment or corps. In such case he forfeits service from the date of his desertion, *as stated in his confession*, till the date of the said order to serve, and also forfeits all advantages as to good conduct pay and pension on discharge from former service.

Man serving confessing desertion from Militia.

If he confess desertion from the Militia, and it prove true, the Secretary of State may dispense with his trial, and order him to be placed under stoppages of one penny a day for 18 calendar months, and, if he belonged to the Militia Reserve, to a further stoppage of one penny a day for 240 days, and he may be either sent back to the Militia or kept to his duty as a soldier. He would reckon service *for discharge* from the date of his attestation, but *for pension* only from the date on which his engagement in the Militia would have expired, unless, from good service, his back service be given to him.

If a non-commissioned officer of the Volunteer Permanent Staff enlist in the army, and confess his desertion, the Secretary of State may dispense with his trial, and order him to be sent back to the Volunteer Permanent Staff, and there placed under stoppages till he has repaid any bounty received by him, and all expenses of his enlistment, or arms, &c., lost by him ; *or* he may be ordered to continue serving, and be put under stoppages till he has paid the expenses of his enlistment in the Volunteer Permanent Staff and for arms, &c.

Man serving confessing desertion from V. P. S.

B. If he be not serving, and confess desertion, he is to be taken before two Justices *at home* (in India one Justice is sufficient), and they enquire into the truth or falsity of his statement. If no evidence be forthcoming, they remand him, and write to the Secretary of State for War for information, and his letter in answer to them is declared to be legal evidence of the facts stated therein.

Man not serving confessing desertion.

If his statement be true, they hand him over to the military authorities for trial. M. A. 37.

If his statement be false the Justices can give him three months' imprisonment as a rogue and vagabond.

APPREHENSION OF DESERTERS.

If the man be not serving, he must be treated as a civilian,—*i. e.*, taken up by a constable, and taken before a magistrate, but the Mutiny Act gives power, when a constable cannot immediately be met with, for any person to apprehend the suspected person, but he must be forthwith taken before the *civil* power,—*i. e.*, some Justice of the Peace. If the magistrate be satisfied that he is a deserter, he may send him in civil custody to the regiment, or nearest military station, M. A. 34.

or may hand him over to a party of soldiers in charge of a non-commissioned officer, always sending a descriptive return, which, in the absence of proof to the contrary, is legal proof of the matters therein stated.

Abroad. The Justice sends him at once to his regiment, or to the nearest military post, or, if his regiment be not in those parts, to some public prison, sending a descriptive return.

Any man thus apprehended is liable to be transferred to any regiment or corps, and then tried.

M. A. 36. A recruit deserting after attestation, but before joining his regiment, is only liable to be taken before a magistrate, and, on its being proved, he forfeits his bounty, and may be transferred to any regiment or corps, but he gets no other punishment. Between enlistment and attestation he may be punished for absconding by a magistrate.

The necessary forfeitures entailed by a confirmed conviction of desertion are laid down in Article of War 168. The court need not award *these*, which are the *inevitable* consequences of conviction, but they may also sentence the prisoner to death, penal servitude, imprisonment with hard labour, and solitary confinement not exceeding two years stoppages, and they *may* sentence him to lose all advantage
A. W. 117. which might accrue from his future service.

OFFENCES IN THE FIELD, CAMP, GARRISON, OR QUARTERS.

A. W. 57. "Sentinel sleeping on his post, or leaving it before he be regularly relieved." The post must be accurately described in the charge, and you must prove that the man was posted. Observe that this offence is only triable by General

Court Martial (except by the written sanction of superior authority).

"Leave his guard, picquet, or post." 'Post' is here used in a different signification from that which it bears in Article of War 57. It here means any duty on which posted, except sentry. You must prove that it was *without leave* that he left it. A. W. 65.

Breaking arrest, or escaping from confinement. An officer *must* be cashiered if convicted. This cannot be tried by any court lower than a District or Garrison Court Martial, except on board a ship not in commission, or on the line of march. A. W. 69.

Permitting prisoner to escape. You must in the charge insert the words 'wilfully' or 'negligently.' A. W. 73.

Article of War 18 merely says that a prisoner must be released or tried "within a reasonable time," see page 32. The usual time within which a man should be tried is 8 days; any longer delay should be explained. A. W. 74.

Article of War 75. As mentioned before, this is for minor disobedience, or neglect of orders, not for direct disobedience. The charge must not be worded under Article of War 38. A. W. 75.

DRUNKENNESS.

Officer drunk on duty under arms, if convicted, *must* be cashiered. There is no provision for trying an officer drunk when *not* 'on duty under arms.' If tried, it must be for 'scandalous conduct,' which must be proved, or under Article of War 105. A. W. 76.

If tried for being 'drunk on duty' the particular duty must be clearly specified. Drunken-

ness is generally taken to include intoxication produced by either liquor, opium, or any other drug.

A. W. 77. A non-commissioned officer may be tried by any Court Martial for drunkenness, *whether on duty or not on duty*, and may be reduced and given such punishment as such court is competent to award, and further fined any sum not exceeding one pound.

A soldier drunk *on duty* may be tried by any Court Martial and punished as above.

A soldier drunk *not on duty* may be fined by his commanding officer any sum not exceeding ten shillings. If he deny having been drunk he may appeal to a District Court Martial.

A. W. 78. If a commanding officer wish to try a soldier drunk *not on duty* by Court Martial, he must apply for a District Court Martial.

A. W. 77. Stoppages for fine for drunkenness are not to exceed four pence per diem.

See p. 28. If the drunkenness accompany a grave charge which is to be tried by a General Court Martial or a District or Garrison Court Martial, the commanding officer is *not* to dispose of it himself, but the drunkenness is to form a separate charge before such court. After a conviction of drunkenness, in case of a soldier, evidence is always to be taken of previous instances of drunkenness, as entered in the defaulter's book.

DISGRACEFUL CONDUCT.

A. W. 79. 'SCANDALOUS CONDUCT.' The insertion of the word "scandalous" renders cashiering obligatory, therefore don't insert it in the generality of cases, as a charge worded under Article of War 105 will meet most cases, and does not

fetter the court. The term 'scandalous' should only be used for heinous offences.

EMBEZZLEMENT OF STORES. This is the only case of disgraceful conduct for which penal servitude can be awarded. The court must take evidence of the loss sustained, and refund of this amount *must* be awarded, and the amount can be recovered as a debt after the offender has left the service. When this offence is tried by General Court Martial, only the punishments enumerated in Mutiny Act 17 can be awarded, but when tried by District or Garrison Court Martial, the prisoner is liable to "such punishments as such court may award." A. W. 80. M. A. 17.

Embezzlement is the fraudulent application to one's own use of that which is entrusted to one's care for another. Embezzlement defined.

Charge either with 'embezzlement,' or '*fraudulently* misapplying;' in the latter case the word 'fraudulently' is necessary.

This 80th article is intended for paymasters, storekeepers, and persons in special positions of trust, not for small things, such as a soldier destroying ammunition, &c. Col. Maisey draws a distinction between embezzling and fraudulently misapplying as follows, *viz.:*

EMBEZZLING is misappropriating that which has come into a person's possession for payment, or credit to a superior, or employer, and *not for use in any way.* See Maisey, p. 205.

FRAUDULENTLY MISAPPLYING is misappropriating money or property entrusted to a person for custody or use for some particular purpose, and which that person diverts from that purpose to his or her own purposes.

In the first case the person has no legal posses-

sion of the money, and, therefore, by English law, commits felony.

In the second case he has legal possession, but commits a fraudulent breach of a lawful trust.

A pay-sergeant making away with company money comes under the latter head. He is liable for embezzlement like any other person if he make away with any *other* sum, such as, say money received for a cheque given to him to cash.

LECTURE XIV.

MALINGERING. The acts done or omitted to be done whence the court are to draw the inference that he 'malingered' should be specified. A. W. 81. Q. R., Appendix C, 25.

MAIMING, &c. A Court of Enquiry is always held on a man becoming injured in any way. See Appendix G.

THEFT. If by a soldier from a military person it would generally be tried by Court Martial; if from a civilian, by a civil court. Q. R., VI, 51.

For larceny (theft) there must be—

(*a.*) Felonious taking.

(*b.*) Felonious carrying away.

(*c.*) It must be proved that the goods were actually or constructively the property of the person set forth in the charge.

By Court Martial you can only award a sentence of two years' imprisonment with hard labour and solitary confinement, stoppages, forfeitures, discharge with ignominy.

By civil law he can be sentenced as follows:—

For *simple* larceny, to imprisonment for two years, or to three years penal servitude.

For *compound* larceny, to 14 years penal servitude. *Compound larceny is larceny accompanied with violence, such as garotting, burglary, etc.*

Therefore, all cases of compound larceny should be sent before a civil court, so as to get the greater punishment.

Observe, however, that a Court Martial can put a soldier under stoppages till the money be returned. A civil court cannot do this.

Q. R., Appendix C, 29. In case of a man found in possession of stolen goods shortly after the theft, try on two alternative charges, unless you have distinct proof as to whether he 'stole' or 'feloniously received' the articles.

Observe the difference between stealing and fraudulently misapplying,—*e. g.*, a man pawning a watch which had been entrusted to him.

CHARGE.

A. W. 81. *Disgraceful conduct* in having at Umballa, on the 29th April, 1876, pawned a watch entrusted to him by Major Gorham, R. A., and thereby fraudulently obtained the sum of five pounds.

NOTE 1.—*By using the word 'fraudulently,' the act is brought under paragraph 6 of Article of War* 81.

NOTE 2.—*In India the custom prevails of inserting the words 'of a fraudulent nature,' 'of a felonious nature,' 'of an indecent nature,' after the words 'disgraceful conduct.' This is not necessary, but in any case it should not prevent the word 'fraudulently,' &c., being used subsequently in the charge as in the example given above 'fraudulently obtained.'*

CANTEEN MONEY, &c., generally tried for fraudulently misapplying. If you are not able to prove that it was fraudulently done, but perhaps occasioned by the man's neglect, charge under Article of War 105, *viz.:*

CHARGE.

A. W. 105. Conduct to the prejudice of good order and military discipline, in having at Umballa, between the 1st and 31st of May, 1876, when employed as canteen sergeant at the Regimental Canteen, 142nd Regiment, so negligently discharged his duty as to cause a loss to the Canteen Fund of rupees one hundred and sixty-five, or thereabouts.

This being tried under the 105th article, and not under 'disgraceful conduct,' can be tried by Regimental Court Martial.

'OFFENCE OF A FELONIOUS NATURE.' Query? What offences are felonious? Felony is properly an offence which occasions a total forfeiture of lands, or goods, or both, at the common law, among these are murder, manslaughter, theft, burglary, and housebreaking, rape, arson, and forgery. Blackstone.

FALSE RETURNS.

These offences are not charged as 'disgraceful conduct,' but are worded under the particular article under which they fall. A. W. 84—90.

"*By false document* conniving at any fraudulent embezzlement;" this supplements paragraph 5 of Article of War 81. This Article 88 includes any misapplication of public money even though *not* dishonest,—*e. g.*, without authority applying money voted for building barracks to digging wells. An officer convicted must be sentenced to be cashiered. A. W. 88.

A soldier can get any punishment other than death or penal servitude which a General Court Martial or a District or Garrison Court Martial can award. He cannot be tried by Regimental Court Martial. See Appendix F.

An officer signing certain documents in blank 'is liable to be cashiered.' A. W. 90.

With regard to false returns, observe that you must prove that the return was false, that the prisoner knew it to be false, and that the person calling for the return was authorised to demand it.

'Conniving' at embezzlement also falls under Article of War 80, but if tried under that article, only the punishments mentioned in Mutiny Act 17 could be given to an officer, and *cashiering is not one of them.*

Offences relating to billets, etc., not very likely to come before a Court Martial. Taking billets A. W. 91—94.

for persons not entitled to them, or taking bribes to free from billets is punishable by peremptory cashiering. A soldier cannot be tried by Regimental Court Martial for *this* crime, but for minor offences against billets he can be so tried, and cashiering is not obligatory in the case of an officer.

See Appendix C.

A. W. 92, 93, 94.

BREAKING REGULATIONS REGARDING RECRUITING.

A. W. 95. Triable only by General Court Martial or District or Garrison Court Martial which can give any punishment other than death or penal servitude which such court is competent to award.

M. A. 80. The penalty under the Mutiny Act for any person unlawfully recruiting is £ 20 for each offence.

M. A. 44. Every recruit enlisted must be taken before a Justice to be attested within 96 hours of his enlistment (not includiug Sunday, Christmasday or Good Friday), but not sooner than 24 hours after such enlistment.

M. A. 52. *Abroad*, any magistrate, and, in any colony, any person authorized by the Governor of the colony, may enlist, attest or re-engage men. *Out of Her Majesty's dominions*, the British Consul, or person acting as such, may do so.

M. A. 52. *In India*, any person authorized by the Governor General, or Lieutenant-Governor or other officer administering the Government of any presidency, division, or province, may enlist, attest or re-engage persons in Her Majesty's Army.

MISCELLANEOUS OFFENCES.

A.W.96—101. These articles call for no remark.

MAKING AWAY WITH NECESSARIES, ETC.

A. W. 102. This offence is triable by any Court Martial.

Q. R., Appendix C, 33. The soldier may be tried on two alternative charges

1*st charge*, making away with the articles. 2*nd charge*, losing by neglect the articles. If found guilty of one of the charges, he must, of course, be acquitted of the other. The articles deficient must be enumerated at length in each charge, but their value need not be stated if it be laid down by regulation. It must be stated in the charge that the articles were part of his accoutrements, necessaries, clothing or equipment, as the case may be, *ammunition is equipment.* A. W. 131.

MEDALS. A soldier cannot be punished for losing a medal, but he can for making away with or selling one. The value must be stated.

For Board to be held when one becomes deficient, see Appendix G.

If the Board report that the medal was made away with *designedly*, the soldier is to be tried by Court Martial. If convicted, he may, after five years clear of the defaulter book, be recommended to Commander-in-Chief for a new one for which he would have to pay. Q. R., XXI, 13.

If he lost it from neglect, he may be recommended for another at his own expense after being two years clear of the defaulter book; and if he lost it accidentally, he may be recommended for another at once. The public will only give him another if he lost it accidentally *on duty*. The Board are always to take evidence of character. A soldier cannot be tried for making away with a medal, if he has been discharged since he obtained the medal, and has again enlisted; for, when he took his discharge, the medal became his private property. '*Attempting to sell*,' or '*offering for sale*' cannot be tried under the 102nd Article of War, but may be tried under Article of War 105. Q. R., XXI, 14. Q. R., XXI, 15.

Observe that this is the only crime for A. W. 104.

which punishment is optional. Also that solitary confinement cannot be awarded for this crime.

A. W. 105. We now come to the last, the 105th. This comprehends all unspecified offences which can be tried by Court Martial, but it is necessary that the offence be—

1*st*.—Not capital.

2*nd*.—One which *is* to the prejudice of good order and military discipline.

3*rd*.—One which is *unspecified*,—*i. e.*, which has no Article of War specially framed to deal with it.

It is this last point which more specially calls for your attention, as in examinations, when called upon to frame charges, it is common to see charges for such crimes as—

Making away with kit. Article of War 102.

Falsely confessing desertion to commanding officer. Article of War 46.

Drunkenness. Article of War 77.

Malingering. Article of War 81.

Making false entry in 'small book.' Article of War 87.

Making disturbance in billets. Article of War 92.

All charged under the heading of "Conduct to the prejudice, etc.," it is *wrong* so to charge them, and doing so shows that a man is ignorant of the fact that there is a particular Article of War to meet the case.

A good plan is to make a list of crimes from Articles of War 31—105. There is no need to commit this to memory, but you can easily recollect whether any crime mentioned be among those on your list, and *if not*, then frame under Article of War 105.

LECTURE XV.

THERE are sundry regulations, penalties, &c., which have not been touched upon in the foregoing lectures, and which I shall give in this.

CORPORAL PUNISHMENT is not to be awarded at all by sentence of a Court Martial in time of peace in Her Majesty's dominions, but may be given on board a troopship *not* in commission, or out of Her Majesty's dominions, or anywhere in time of war. It can only be awarded to reduced non-commissioned officers and private soldiers. It can never exceed fifty lashes. Regimental Courts Martial and Detachment Courts Martial cannot give it in addition to imprisonment. *The rules for commuting or mitigating it have been given before.* A. W. 118. Page 76.

A soldier, a prisoner in a military prison, can, for assaulting, or violently resisting a prison officer, be given— M. A. 83.

(1.) By a board of not less than *three* visitors,

Fifty lashes, or less, or imprisonment with or without hard labour not exceeding six calendar months.

(2.) By a single visitor,

Twenty-five lashes, or less, or imprisonment with or without hard labour not exceeding 72 hours.

If within 48 hours of his discharge from prison for any offence against the prison rules, he may be given by a board or a single visitor—

Seventy-two hours in a dark or light cell, with or without hard labour, on bread and water diet, or otherwise.

A. W. 23. DISCHARGE BOARDS may be dispensed with in the cases of soldiers ordered by the Commander-in-Chief to be discharged on being sentenced to penal servitude, for, as in this case the soldier forfeits *every* advantage, the board would be of no use.

A. W. 7. A commanding officer not crying down credit of his corps is ordered to be suspended for three months, and his whole pay for that period applied to discharging any debts contracted by the soldiers under his command; but it is not stated by whose authority this is to be done, and it A. W. 125. could not be done by sentence of Court Martial.

A. W. 160. When it appears desirable to the officer convening a Court Martial that the court, or some of its members, should view any spot so as better to understand the evidence, he may direct the court, *or so many members thereof as he shall think fit*, to view such place.

Army Enlistment Act, 1847, 7. A soldier committing an offence shortly before the time for which he enlisted expires, cannot claim his discharge then, but may be detained till his trial for the offence can take place, and until he shall have undergone any punishment to which the Court Martial may have sentenced him.

A. W. 8. An officer or soldier ill-treating landlords in billets may be put under stoppages by commanding officer of half his pay, till reparation be made; but, if he choose, he can demand a Court Martial.

A. W. 13. If a soldier think himself wronged by the officer commanding his company in any matter affecting his pay or clothing, he is to complain to his commanding officer, who is required to summon a Regimental Court of Enquiry. Either party can appeal from this to a General Court

Martial, which may either confirm the appeal, or dismiss it, or pronounce it vexatious, and sentence appellant to punishment. There would be *no prisoner* before this Court, the parties appearing as 'appellant' and 'respondent.'

Service towards pension.

A soldier forfeits service towards good conduct pay and pension if convicted of desertion, maiming himself or another soldier, or tampering with his eyes, such conviction having been confirmed; or if sentenced to penal servitude, or if discharged with ignominy, or if found guilty of felony, or of any crime which would be felony in England; and a soldier is not allowed to count service towards pension:

1. Whilst in confinement under sentence of a court. A. W. 170.

2. During confinement as a confessing deserter.

3. During confinement on a charge on which he is subsequently convicted.

4. Whilst confined for debt.

5. During absence as prisoner of war. A. W. 171.

6. During absence without leave over five days, or during desertion, if convicted. A. W. 172.

A soldier may be sentenced by a General Court Martial or a District or Garrison Court Martial to forfeit all claims to pension from his former or his future service. A. W. 117.

If a soldier's trial for desertion be dispensed with, he forfeits all claim to pension from his former service. A. W. 47.

If on re-enlistment a soldier conceal the fact that he has served before, or misrepresent the cause of his former discharge, he shall not receive any pension if again discharged for disability. A. W. 4.

A. W. 169. Any soldier who has forfeited the whole or any part of his service towards pay or pension, may be restored to the benefit of such service by the Secretary of State for War, on the soldier being recommended by Commander-in-Chief for good, faithful, or gallant services. The time after which this recommendation may be made is laid down in the Queen's Regulations to be—

Q. R., VI, 64.

After a first such conviction	...	5 years.
,, second ,,	...	7 ,,

and if any circumstances of an aggravated nature attended the commission of the offence, then after 10 years clear of the defaulter book.

Service for discharge. A SOLDIER FORFEITS SERVICE FOR DISCHARGE for all periods when absent from his duty from the following causes, *viz.* :—

M. A. 50.

1. Imprisonment under sentence of a civil court or a Court Martial, or period of previous confinement *if convicted.*
2. Desertion.
3. Absence without leave exceeding five days.

A. W. 171.

4. Detention as a prisoner of war, unless a Court Martial recommend him to reckon service during his absence.

Forfeiture of liquor ration. A. W. 170. For misconduct on boardship, a soldier may be deprived by his commanding officer of his ration of liquor, or of any sugar or tea issued to him instead of such ration, or of the penny a day which he would get if he did not draw such rations, for a period not exceeding 28 days.

☞ *This is not a fine, but a deprivation of privileges in the way of boardship ration.*

The following documents are declared to be admissible as evidence before Courts Martial by the Mutiny Act and Articles of War, *viz.* :

M. A. 18.

1. Certificate by the Clerk of the Crown of

the Court of Queen's Bench of the conviction and sentence by Courts Martial to penal servitude of any offender.

Proof of such conviction and sentence.

2. Descriptive return by magistrate of a man committed by him as a deserter. M. A. 34.

Proof—in the absence of proof to the contrary —of the matters therein stated.

3. Certificate from clerk of any criminal court of the conviction and sentence, or acquittal before it of any officer or soldier. M. A. 39.

Proof of such conviction, sentence, or acquittal.

4. Declaration made on attestation in a case of a man charged with making a false statement on attestation. M. A. 48.

Proof of his having made the declaration.

5. Record of a soldier's confession of desertion as made in the regimental books, and signed by the commanding officer; or a certified copy of the same. A. W. 46.

Proof of the soldier's having made such confession.

6. Letter signed by or on behalf of the commanding officer of the corps from which a soldier states that he deserted, in reply to a letter from the commanding officer to whom he makes such confession, enquiring into the truth or falsehood of such statement. A. W. 46.

Proof of the matter therein contained.

7. Entries of former instances of drunkenness in the defaulter book. A. W. 78.

Proof of such instances of drunkenness.

8. Entries of previous convictions by either a Court Martial or a civil criminal court, as made A. W. 154—156.

in the Court Martial or defaulter's book, or certified copies therefrom.

Proof of such former convictions.

9. Record in the regimental books of the declaration made by the Board of illegal absence in the case of a soldier absent without leave over 21 days; or a copy thereof signed by the officer having custody of such books.

Proof of absence, and loss of kit.

M. A 59. 10. Last quarterly pay lists.

Proof of man having been for six months on the strength and pay list of a regiment or corps, and, therefore, to be deemed regularly enlisted.

M. A. 48. 11. Letter from the Lords of the Admiralty or from the commanding officer of the ship, corps, or regiment, from which any person appears to have been discharged.

Proof of the facts stated therein in relation to the service or discharge of such person.

M. A. 60. Paymaster or other officer detaining pay for one month, to be fined £100, and discharged from his employment.

M. A. 77. Agent doing so, for first offence to be fined £100; for second offence to be discharged; and, if already discharged, to forfeit £200 for the second and for every subsequent offence.

M. A. 78. Trafficking in commissions, or conniving at extra money, passing on an exchange,—penalty £100.

M. A. 79. False mustering by civilian, penalty. £50. Person showing himself falsely at muster, or lending horse to show at muster,—penalty £20.

M. A. 81. A civilian inducing a soldier to desert, or harbouring a deserter, can get six months imprisonment from two Justices of the Peace.

M. A. 82. An officer or soldier forcibly entering a house in pursuit of a deserter, shall forfeit a sum not

exceeding £20, if convicted before two Justices of the Peace.

Any person aiding a prisoner to escape from a military prison, on conviction, may get penal servitude not under five nor over seven years, or imprisonment with hard labour not over two years. M. A. 83.

For bringing in liquor he might get three months' imprisonment, or fine not over £20, and not under £10.

For bringing in anything else against rules, or for assaulting a prison officer, he could get one month's imprisonment, or fine not over £5. A keeper of a prison refusing to confine a prisoner forfeits £100. M. A. 84.

Any person buying knowingly from a soldier, or deserter any articles of kit, arms, sheets, barrack furniture, &c., forfeits for the first offence treble the value of the articles, and not over £20 fine. M A. 85.

Second offence, treble the value of the articles; fine not over £20, nor less than £5; and imprisonment with hard labour for six months. These fines may be reduced abroad.

Any soldier who may have volunteered for the corps of armourer sergeants, or the army hospital corps, can, for misconduct, unfitness, &c., be sent back to his own corps, or to any other corps at the station at which he is serving, by order of the officer commanding the station, abroad, or the Commander-in-Chief of Presidency in India; and any staff clerk or other non-commissioned officer or soldier on the staff may, if removed from staff employ, be transferred to any corps serving at the station. M. A. 54. Transfer of soldiers to other corps.

He may be transferred at his own request by Commander-in-Chief or officer commanding presidency or foreign station.

M. A. 36. Any recruit deserting before joining his regiment after receiving pay, or being attested, forfeits his bounty, and may be transferred to any corps.

M. A. 34. Any person committed as a deserter may be transferred by order of the general, or any other officer commanding, to any convenient regiment or corps, and there tried.

M. A. 53. Men belonging to a corps beyond seas, which is relieved, or disbanded, may be transferred to another corps, if they volunteer.

M. A. 54. A. W. 42. Convicted deserters may be ordered to serve in any corps.

A. W. 3. Recruit concealing an infirmity on enlisting may be transferred to any Garrison, Veteran or Invalid Company.

Army Enlistment Act, 1870, s. 7. Soldier, invalided from foreign service,—or if when his corps be ordered on foreign service he be unfit to go from health, or if he be within two years of the termination of his army service, may be transferred to a corps of the same branch of the service at home; or, if a short service man, if he be abroad, and his regiment be ordered home, and he have more than two years still to serve, he may be so transferred to one abroad.

M. A. 99. COURTS OF REQUEST may be held in India in any place out of the jurisdiction of a Small Cause Court; they may be assembled by the commanding officer of the camp, garrison, or cantonment; they can take cognizance of debts, not over 400 rupees, owed by officers, or sutlers; non-commissioned officers and soldiers are not liable to these courts, nor can a soldier prosecute an officer before them, nor one officer prosecute another officer. They must consist of five or three commissioned officers. The President must be a field officer, if practicable, and never

under the rank of captain, and every member must have five years' service as a commissioned officer. They are sworn, and take evidence on oath. They can award execution against any private property (not military equipment), and can order half the officer's pay and allowances to be stopped till the debt is paid. In case of a sutler, or person drawing no pay, he may be imprisoned within the military boundaries for any period not exceeding two months, if the debt be not sooner paid.

Hospital Apprentices.

Hospital Apprentices are liable to the provisions of the Mutiny Act as being persons "serving in the Medical Department," and, therefore, could be awarded death or penal servitude for offences under Mutiny Act 15 (or 101), and penal servitude, imprisonment with or without hard labour, fine, dismissal, and refund under Mutiny Act 17 if tried by General Court Martial. For other offences, Article of War 128 provides that in India a hospital apprentice may be sentenced by a General Court Martial or a District or Garrison Court Martial to be suspended from rank, pay, and allowances for a stated period; reduced to the lowest or any other place in the list of hospital apprentices; or to both of these punishments; or to be dismissed from the Service.

M. A. 2.

A. W. 128.

NOTE.—*A hospital apprentice is not a warrant officer, therefore, a District or Garrison Court Martial for his trial in India must consist of seven members.*

TRIAL OF OFFICERS AND SOLDIERS IN INDIA BY GENERAL COURT MARTIAL FOR CIVIL OFFENCES.

M. A. 101.

In the territories of any foreign State in India, or in any country in India under Her Majesty's protection, or in any place in Her Majesty's dominions in India which is 120 miles from the Presidencies of Fort William, Fort George, and Bombay (*other than* Prince of Wales Island,

Singapore, or Malacca), any person subject to the Mutiny Act may be tried by General Court Martial by order of the Commander-in-Chief of the Presidency for any offence which would in England be punishable by the criminal law there, provided that it be also punishable by the Indian Penal Code, and may be sentenced to such punishment as an Indian civil criminal court could give for the offence (*i. e.*, what is laid down in the Indian Penal Code). In the conduct of its proceedings, and with regard to rules of evidence, it is to be guided by the customs of English law. It must be confirmed by the Commander-in-Chief of the Presidency, who may commute penal servitude to imprisonment with or without hard labour for such period as to him may seem fit. If death or penal servitude be awarded to an officer, or death to any person, such sentence shall not be carried into execution until it shall have been duly approved by the Governor General in Council, or the Governor of the Presidency in Council.

TRIAL OF CIVIL OFFENCES, BEYOND SEAS IN HER MAJESTY'S DOMINIONS (EXCEPTING IN INDIA), WHERE THERE IS NO CIVIL JUDICATURE.

A. W. 143. In such places, *and in Gibraltar*, offences, which would in England be punishable by a civil criminal court, may be tried by General Court Martial appointed by the officer commanding at such foreign station, and may give death, penal servitude, or such other punishment as a General Court Martial can give; no punishment to be contrary to the usages of English law for punishment of offenders.

See p. 73.

A. W. 145. *Out of Her Majesty's dominions* the same, but may be assembled by the general or other officer having power to convene Courts Martial, and if he commute death to imprisonment, he is limited to two years' imprisonment, also sentence of death

or penal servitude on an officer is not to be carried out till confirmed by the Commander-in-Chief of the Forces.

LIABILITY OF SOLDIER FOR WIFE AND CHILDREN OR BASTARD CHILD. If an order be made by a civil court, a copy must be sent to one of the principal Secretaries of State, and he may deduct six pence a day from a sergeant's pay, or three pence a day from a soldier's pay, and apply the pay thus withheld to the maintenance of such wife and children, or child. M. A. 107. A. W. 177.

A summons on a soldier for such a matter at home must be left on his commanding officer, and they must deposit sufficient money for the soldier to attend the hearing of the case, and return from doing so. The summons is ineffectual if he be under orders for embarkation to serve abroad.

There are four penalties which I have not mentioned, *viz.*:

Refusing to provide billets, &c., or demanding tolls from soldiers on duty—Fine not over £5, and not less than 40 shillings. M. A. 86.

A man pretending to be a soldier, and demanding billets—Fine not over £5, not under £1.

Officer forcing carriages to go further than the Justices order, or to carry women or soldiers, &c.—Fine not over £5, not under £2. M. A. 87.

Officer quartered in a place, killing game or fish without leave, forfeits £5. M. A. 88.

LECTURE XVI.

EVIDENCE.

WITH regard to evidence Courts Martial conform, generally, to the rules observed in the practice of civil courts, and it has been now definitely laid down that it is only the English rules which are to guide the proceedings of *European* Courts Martial.

M. A. 101.

It is important to have a clear idea of what evidence is admissible, and what is *not* so, as, if inadmissible evidence be not rejected, not only may injustice be done, but the proceedings may be immensely protracted.

Definition of evidence.

Evidence is all legal means, exclusive of argument or deduction, which tend to prove or disprove any matter which has been submitted for the determination of the Court.

The principal means are—

1. 'Parole,' or 'oral' testimony of witnesses examined *viva voce* in court as to facts within their own knowledge.

2. Written or documentary evidence produced in court.

3. There are certain matters which courts are bound to notice judicially,—*i. e.*, *without proof*. Such are—

Acts of Parliament.

Queen's Regulations.

Royal Warrants and Regulations, as every body is supposed to know them; and the court may refer to them to refresh their memories

without their being produced and sworn to, as all other books, papers, etc., must be.

The members may also inspect for themselves any things or places properly identified by evidence, and considered material to their decision.

PROOF is not the same as but the consequence of evidence. Proof.

A matter is considered to be legally proved when it is established *by competent and satisfactory evidence.* Matter when proved.

Competent evidence is such as is admissible by law.

Satisfactory evidence is such as will satisfy a reasonable and unprejudiced mind.

There are five maxims or general rules of evidence which must be thoroughly learned and understood.

RULES OF EVIDENCE.

1. The evidence must be confined to the points at issue. Rules of evidence.

2. The burden of proof lies with the party making the assertion.

3. The substance only of the issue or charge need be proved.

4. Hearsay is not evidence.

5. The best evidence must be produced which the nature of the case admits of.

Rule 1. What are "*points at issue* ?"

Points at issue are facts alleged by the prosecutor in his arraignment, and denied by the prisoner in his plea of 'not guilty.' Points at issue.

All evidence which does not go to prove one or other of these issues, should be rejected. Evidence, however, which is, at first, apparently

irrelevant, may really bear on the issue importantly; therefore, the court must exercise a careful discretion, but may refuse evidence unless it can be shown in what way it will be useful.

Evidence indirectly bearing on the points at issue.

Sometimes circumstances which have not an immediate and direct bearing on the very point at issue, may afford an indirect and consequential inference to prove or disprove the disputed fact, and such evidence should not be disallowed. A question which would be irrelevant in the examination-in-chief may be quite allowable in cross-examination; and though, as a rule, enquiry into facts other than those which are charged would not be allowed, yet, in the absence of direct proof, if it can be shown that they bear *indirectly* on the point at issue, such evidence may be taken, —*e.g.*, in a charge for stealing, though it is not material, in general, to enquire into the taking of other goods not mentioned in the charge, yet, if goods stolen the same night from the same or adjacent premises were found in the prisoner's possession, it would be strong presumptive evidence that he had been in or near the owner's house at the time, and in that point of view it would be material.

In desertion cases it is frequently necessary to enquire into collateral matter, such as selling of uniform, purchase of plain clothes, etc., in order to prove that he had no intention of returning, such *intention* being one of the points at issue.

Evidence of character.

No evidence of *bad* character can be given against a prisoner as an argument for his guilt,—*e.g.*, on a trial for murder, evidence as to attempts to murder other men would be excluded, but threats against or previous attempts to assassinate the deceased *would* be admissible as evidence of intention, as would also any evidence showing

the existence of a motive likely to instigate him to commit the murder in question.

Although evidence of bad character cannot be brought forward before the finding, yet evidence of good character may be brought forward in the defence.

Character unconnected with the charge must not be allowed to weigh as evidence,—*e. g.*, evidence of gallant conduct in the field on a charge of theft, or evidence of honesty on a charge of misbehaving before the enemy; such evidence must be taken, but must not be weighed. Where there is point blank contradiction of evidence as to facts, and the prosecution is weak, evidence of character becomes most important, especially where there is only one evidence on each side, such as charges of assaulting women in railway carriages, etc.

Acts or words of co-conspirators.

In charges of conspiracy, acts or words of any one of the party, if in pursuance of the original concerted plan, are considered as the acts or words of the whole party, and evidence regarding them is admissible against the others. Evidence as to the history and nature of the conspiracy, even before the prisoner had anything to do with it, is admissible. Evidence as to the prisoner's conduct *after the crime* may be received, if it be such as would tend to show whether he had committed the crime or not.

Writings and words being part of the *res gestae are* evidence against co-conspirators, but statements and writings of conspirators, not being part of the *res gestae*, but mere relations or narratives of some part of the transaction, are treated as hearsay, and are not admissible.

Res gestae.

What are res gestae? Res gestae are all acts and transactions forming part of the matter under investigation.

In the same manner as collateral testimony can be brought against the prisoner to show intention, so can he bring similar evidence in his defence to *disprove* such intention,—*e. g.*, on a charge of murder he may prove acts of kindness, and expressions of goodwill towards the deceased to show that his intention was not likely to be what the charge imputed.

Rule 2. *Rule* 2.—*The burden of proof lies with the party making the assertion*,—*e. g.*, if the charge be drunkenness, it is for the prosecutor to prove that the prisoner was drunk, not for the prisoner to prove that he was sober.

If the prisoner plead guilty, the prosecutor is relieved of the burden of proof.

During the trial the burden of proof is frequently shifted on to the prisoner by means of what in law are called 'presumptions.' The following are the principal ones:

Presumptions. A. *In all cases where an action is unlawful the law will presume criminal intent*,—*e. g.*, a man is killed by the prisoner, if accidentally, or in self defence, it is for the prisoner to prove that it was so, because killing a man is an unlawful act, therefore the law will presume criminal intent unless proof be brought to the contrary.

Ex. 2. *Forgery*. The criminal intent must be proved by the prosecutor, because the act of writing another man's name is not a crime, unless it be done with criminal intent.

Ex. 3. *Desertion*. It is sufficient for the prosecutor to prove absence without leave, for this is an illegal action; the prisoner must prove the intention to return.

B. The possession of stolen goods shortly after the theft throws on the possessor the onus of accounting for his possession of them.

C. A letter properly addressed to prisoner and posted. The law will presume that he received it, unless he prove that he did *not.*

D. *The law presumes* "*omnia rite esse acta*,"—*i. e.*, that all necessary things have been done unless disproved,—*e. g.*:

1. A soldier tried. You need not prove his enlistment.

2. Soldier tried for striking an officer. You need not prove the officer's commission.

E. *The law presumes that every man is innocent until the contrary be proved.* This does not, however, invalidate A., *viz.*, that if you prove the illegal act, the law will presume illegal intention.

F. In civil law, a receipt for subsequent rent is presumptive proof that rent for the same premises for a previous period has been paid; and, similarly, proof of the settlement of a soldier's accounts for a particular month would, in the absence of proof to the contrary, be presumptive proof that he had been settled with for any former month.

G. It is the duty of officers to make themselves acquainted with the orders published in the order book. A court will presume that an order so published was known by such officer, unless he brought proof of his not having been able to see it.

H. When an action is done which is injurious to another man, the law will *primâ facie* presume malice.

These are the principal 'presumptions' on a charge for "disgraceful conduct in having wilfully maimed or injured *with intent* to render unfit for the Service." In default of other evi- Q. R., Appendix C, 26-27.

dence, the intent would be presumed from the illegal act of maiming, &c. [The old rule A.] Lord Mansfield points this out very clearly. His words are:

When intent must be proved. When presumed.

"Where an act, in itself indifferent, if done with a particular intent, becomes criminal, *then* the intent must be proved, and found; but where the act is itself unlawful, the proof of justification or excuse lies on the defendant, and, in failure thereof, the law implies a criminal intent."

LECTURE XVII.

EVIDENCE CONTINUED.

Rule 3.—*The substance only of the issue or charge need be proved.* Rule 3.

This is to prevent minor issues,—*i. e.*, small things which do not really affect the charge, from interfering with the course of justice.

All offences may be divided into—

1. Specific act.
2. Concomitant circumstances which are merely an aggravation.

If the second part, or aggravating circumstances, be not proved, the prisoner may still be found guilty of the other part.

In cases of slander or disrespectful words, a slight discrepancy will not matter, so long as the material part of the words be proved. This rule is applicable in cases in which the evidence fails to establish the full import of the offence, but, nevertheless, proves facts which are sufficient to constitute a crime which is included in the charge; thus, a soldier charged with desertion may be found guilty of absence without leave, or one charged with striking a superior officer in the execution of his office may be found guilty of striking only. It must, however, be borne in mind that, though a man may be found guilty of a minor offence of the same kind, involving a lesser punishment, you can never find him guilty of a greater crime than that charged, which would entail a greater punishment.

Rule 4.—*Hearsay is no evidence.* Hearsay evidence is evidence of the statements of *third* persons made in the absence of the prisoner. Rule 4.

It applies to written as well as to spoken matter, and includes any verbal or written narrative of facts given secondhand, and the value of which depends, not on the veracity of the witness before the court, but on that of another person *not* present. Such evidence is rejected on the broad principle that every fact must be proved on oath in the presence of the court, and that the witness must be open to cross-examination.

The point at issue may be, not whether a statement was true or not, but whether it was made,—*e. g.*, a Fenian informer was allowed to state what passed at Fenian meetings to show that they were treasonable, but if his statement went on to repeat a narrative there told by a third party, it was not allowed to be taken as evidence against the prisoner. A threatening statement is an act, *not* a narrative, and may be deposed to.

What a man has said or written may prove that he had certain knowledge. A statement made by a third person *in the presence of the prisoner* immediately after the commission of the offence, may be received as confirmatory evidence,—*e. g.*, a witness deposes "I heard a heavy fall in the barrack-room; I ran in and saw Sergeant Smith on the ground; he was bleeding at the nose; the prisoner, Private Jones, was standing over him; Sergeant Smith said: 'Private Jones has just knocked me down, seize him.' Private Jones then ran out before I could secure him." This evidence would be admissible as confirmatory of any statement subsequently deposed to by Sergeant Smith, *because it was made in the presence of the prisoner;* but had the evidence commenced, "as I was entering the barrack-room Private Jones ran out, &c.," this witness could not depose to what the Sergeant said, because it was not said in the presence of the prisoner.

There are certain exceptions to this rule, that "hearsay is no evidence," and that every fact must be proved on oath in the presence of the accused, and the witness must be open to cross-examination. Exceptions

The most important are—

1. The dying declaration of a person who, having received a mortal injury, and fully believing that he is in immediate danger of death, relates the cause of his death, or other material circumstance. Dying declaration.

The immediate prospect of death is considered equivalent to an oath in influencing the person to speak the truth.

Such a statement, though *not* made in the presence of the accused, *nor* subject to cross-examination, *is* admissible, but *only* where the death of the person who made the declaration is the subject of the charge, and where the circumstances of the death are the subject of the dying declaration.

Note this,—This evidence *is not* available to prove anything else, such as a forgery or other crime,—*e. g.*, a man dying robbed, his dying declaration is *not* admissible to prove the robbery.

2. The declaration of a person robbed or of a woman ravished, made immediately afterwards, may be received as *confirmatory evidence*, though the particulars of such statements cannot be enquired into. Exception 2.

3. Statements of third persons made in the presence of the prisoner are sometimes received, not so much as evidence of the acts, but of the prisoner's conduct under the circumstances.

The value of any dying declaration may, of course, be called in question,—*e. g.*, it may be

shown that the deceased, at the time he made his statement, did not believe that he was dying; or that his statement, on oath, would be unworthy of belief.

Hearsay, finally, is admissible, when the words or writings are received in evidence, *not* as proof of the statements therein contained, but as being, in fact, transactions in themselves, concerning which enquiry may be instituted, as to whether they have taken place or not.

Rule 5. *Rule* 5.—*The best evidence must be produced which the nature of the case admits of.*

The meaning of this rule is, that no evidence shall be admitted which leaves grounds for supposing that other and better evidence remains behind in the possession or power of the party. The very production of any secondary evidence tends to raise a presumption of some secret or sinister motive for withholding the better and more satisfactory evidence, and leads to the inference that the best evidence, if produced, would have led to the detection of some concealed falsehood.

To illustrate the rule. The official record is the best evidence of the proceedings of a court of justice, and a written document is the best proof of its own contents.

Secondary evidence. Where it can be shown that the best possible evidence cannot possibly be produced, the law will allow the next best, or 'secondary' evidence to be taken,—*e. g.*, if a document no longer exist, or be in the possession of the prisoner, who refuses to produce it after being called upon to do so, then a copy duly sworn to by the person who made it, or who compared it with the original, or the evidence of the person who wrote the original, or of some one who has seen the docu-

ment and can swear to its contents, may be taken, but no unauthenticated copies or hearsay as to its contents can be received.

Now, what is "the best evidence?"

Best evidence.

1. The best is the evidence of your own senses, but this is not often available.

2. The next best is the evidence of persons who can speak *from their own knowledge* from having seen or heard or taken part in the transaction.

Example: (1) *an original letter;* (2) *some one who can swear to its contents.* "(2)" *must not be taken unless it can be shown that* "(1)" *cannot be produced.*

3. Evidence at second-hand called secondary, —*e. g.*, a copy of the letter.

More will be said on this when I come to "Documentary Evidence."

One witness sufficient.

Observe that, though the law lays down the *kind* of evidence, it does not define the *amount.* One witness is sufficient, if his evidence be legally good and satisfy the court. The only exceptions are treason; perjury; and also the Mutiny Act directs that, in charges against an officer of breaking laws for billets, two witnesses shall be necessary.

Exception.

M. A. 87.

Accomplice.

The evidence of an accomplice is legally sufficient, but is generally considered to need corroboration.

Single witness.

The credibility of a single witness would be, of course, liable to be impeached, and would be judged from attendant circumstances. It is, therefore, only when, from the privacy of the offence, the possibility of further proof is excluded, that a court would be satisfied with the evidence of a single witness.

[*See the cases of Paymaster Francis and Lieut. Cameron, in Simmons*, 869, 870.]

The question is, not by how many witnesses a fact may have been deposed to, but whether it has been proved satisfactorily.

A number of witnesses no more prove a fact than a number of arguments prove a conclusion.

The clear, full, impartial evidence of one witness, free from all suspicion or bias, is worth more than that of a crowd, all making the same assertions, yet none of them worthy of belief.

See preceding page.

The value of the second class of evidence is, that the witness speaks from his own knowledge, and his trustworthiness is guaranteed in two ways, *viz.:*

(*a.*) By his being on oath.

(*b.*) By his being open to cross-examination.

This latter cross-examination is—

1*st.*—For veracity.

2*nd.*—To test his powers of memory and observation.

CIRCUMSTANTIAL EVIDENCE.

Circumstantial evidence is such as indirectly proves a second fact by directly proving another fact not directly at issue.

The court must judge of the connection which the facts proved have with the points at issue.

Presumptive proof.

'*Presumptive proof*' is proof which arises from circumstantial evidence.

This evidence is not so easy to falsify as direct evidence, and is better tested by cross-examination. Its value depends on the number and strength of the different chains of evidence, all

tending to the same point. "Circumstances cannot lie," but the conclusions drawn from them are frequently incorrect.

When all the proofs of a fact are dependent on *one*, the number of proofs neither increase nor diminish the probability of the fact, for the value of the whole is reduced to the value of that on which they depend; but where the proofs are distinct, and independent of each other, the probability increases in proportion to the number of proofs, for the falsehood of one does not affect the others.

LECTURE XVIII.

DOCUMENTARY EVIDENCE.

If any person has in his possession, or under his control, any letters, papers, returns, orders, books, &c., which are considered necessary to the trial, a special clause is inserted in the summons to attend, ordering him to bring them with him. This is called a "*duces tecum.*" A personal or informal request is not sufficient.

The prisoner may thus require the prosecutor to produce documents.

The prisoner cannot be compelled to furnish such evidence against himself, but, if called upon to do so by the prosecutor, through the Deputy Judge-Advocate, or the President, and he refuse to do so, after proof of reasonable notice, secondary evidence of their contents may be received.

The court must decide whether the witness should be compelled to produce the documents or not; and if he refuse to do so, he can, if a civilian, be attached, and if a military witness, be put in arrest, and tried by Court Martial.

Privileged documents.

Certain documents cannot be demanded,—*e. g.*, minutes of evidence before the Privy Council, and proceedings of a Military Court of Enquiry cannot be called for in civil courts without the permission of the Crown ; nor can the minutes of a Court of Enquiry be called for by Courts Martial without the consent of the superior military authority by which the Court of Enquiry was assembled. So also confidential reports or confidential letters can be produced only by permission of superior military authority. Should it be refused, the refusal ought to be properly

proved, and should be recorded in the proceedings. Documents may be divided into two classes, *viz.:*

(*a.*) Public.
(*b.*) Private.

"*a.*" *Public*, are all public records, registers, pay lists, returns, proceedings of courts, records of convictions, and similar documents.

"*b.*" *Private*, are all letters, whether official or otherwise, and private accounts, receipts, etc.

Public Records.

As a rule, all public records are accepted as evidence of the facts they are required to register, and which are immediately within the knowledge of the registering officer,—*e. g.*, a prison record could not be brought forward to prove a previous conviction, but it could be used to prove the date, because the crime was not within the knowledge of the prison officer.

Certified copy.

When the original records cannot be conveniently produced, a certified copy is sufficient, bearing the signature of the officer who keeps the record.

Certain documents are declared by the Mutiny Act and Articles of War to be sufficient; for a list of these see Lecture XV. There are only three letters which are especially made evidence of their contents, *viz.:*

In case of a man confessing desertion—

1. The letter from the Secretary of State to a magistrate. M. A. 37.

2. The letter from former commanding officer to the present commanding officer. A. W. 46.

In answer to letters from them, enquiring whether such statement be true or false.

3. Letter from the Admiralty or the command- M. A. 48.

ing officer of a ship, corps, or regiment from which a man appears to have been discharged.

Proceedings of Courts Martial how proved.

The proceedings of General Courts Martial and District or Garrison Courts Martial are either produced in original, or a copy certified by Judge-Advocate General or his deputy is produced. Those of Regimental Courts Martial are proved by signature of the commanding officer or of the Adjutant having custody of the original. Of course, such proceedings will only prove that certain evidence was given, or a certain statement was made, and will not prove any allegation by the recorded testimony of witnesses at that trial. Evidence, however, given by a witness at a former trial may be read over to him in the presence of the new court, and, if acknowledged by him on oath, may be entered on the proceedings.

Now remember, official letters are, in the eye of the law, *private*, and no letter (except the three specially mentioned) can be adduced as proof of the facts it professes to relate,—*e. g.*, a copy of a register is proof of a marriage, baptism, or funeral, but a letter from the clergyman stating that he performed such a ceremony is no proof. Such a letter is merely the written statement of a person *not* before the court, *not* on oath, and *not* subject to cross-examination.

A letter is, however, proof of itself of its own existence, and of the fact of its having been written,—*e. g*, an insubordinate letter is proof of insubordination, and a threatening letter is proof of the threat.

Copy when admissible.

Where a letter is admissible as evidence, a copy is not admissible unless it be shown—

1. That the original is not available.
2. That the copy is a true copy.

A mere authenticating signature is not sufficient to prove the latter.

Where the original is produced, the handwriting must be proved, unless it be admitted by the opposite party. Notice of the letters, &c., they are required to produce must be given to the opposite party through the Deputy Judge-Advocate.

If the handwriting be admitted, and the original produced, it must be so stated in the proceedings or deposed to in evidence.

Best proof of a document.

The best evidence of the authenticity of a document is that of the writer.

The next best that of persons who saw it written.

The third best, that of persons who, from knowledge of the writer and his handwriting, can depose to it.

Experts in handwriting.

Experts in handwriting are now admissible in civil trials, and, therefore, are so before Courts Martial; as a rule their evidence is not considered in itself sufficient, but is corroborative.

Copies must be attested in court by the person who made, or subsequently examined them comparing them with the original, unless admitted to be true copies, which admission must be recorded in the proceedings.

Although the original must, if possible, be produced before the court, a copy will do to attach to the proceedings.

'Depositions' are not admissible before Court Martial, but there is nothing to prevent a court being adjourned, and ordered to reassemble in the hospital, or quarters of a sick person who is unable to attend, and his evidence could be there taken.

The proceedings of a Court of Enquiry cannot, of course, be brought to prove the facts detailed in the statements recorded by it, but the proceedings may be adduced in evidence for such a purpose as to prove a discrepancy between a statement then made and the evidence given before the Court Martial, or where a man be tried for making a wilful false statement before such a court. The one exception is, that the record of the declaration of the Board on illegal absence, as entered in the regimental books, is proof of absence and loss of kit.

Record of Board on illegal absence.

Such documentary evidence as may have been duly proved and admitted by the court is read in open court by the Deputy Judge-Advocate.

All documents attached to the proceedings must be identified by the signatures of the President and Deputy Judge-Advocate.

Testimonials, &c.

The prisoner is often allowed to put in testimonials and letters relative to character, although such writings are not legal evidence, but the court should not allow any document which is *not legal* evidence to influence their *finding*.

CONFESSIONS; ADMISSIONS.

ADMISSIONS are usually confined to minor points,—*e. g.*, handwriting or dates; they must be recorded in the proceedings, and exclude the necessity of evidence on the point.

CONFESSIONS, *if voluntary*, are admissible under whatever circumstances made, but any inducement of any kind, whether a threat, or a promise of pardon made by any person in authority, would render such confession inadmissible,—*e. g.*, the circumstances detailed by a man who had turned Queen's evidence under hope or promise of pardon, are not admissible as evidence against

him, inasmuch as they were not voluntary. A confession made by a man when drunk is admissible, but the court would, of course, weigh it accordingly. In the case of a man in gaol writing a letter, and attempting to send it, such letter, if intercepted, would be evidence against him.

Prisoner's letter intercepted.

The law takes no notice of oaths irregularly administered,—*e. g.*, if a prisoner put a fellow prisoner on oath not to reveal what he should tell him, and then confess a crime, his fellow-prisoner's evidence *would* be admissible to prove such confession.

Irregular oaths.

Statements made by the prisoner to his legal adviser are privileged, but the privilege is that of the client.

Privileged communications.

Confessions made to a priest are not privileged by English law.

Admissions made before Courts of Enquiry have been laid down not to be admissible before Courts Martial. I believe that by strict law they could be received, but the custom of the Service is against receiving admissions made on oath, or under compulsion, by a person not in custody, against him on his subsequent trial.

NOTE 1.—*If any part of a confession be taken, the whole must be taken with equal weight.*

NOTE 2.—*The confession is evidence only against the confessor; and not against his accomplices,—e. g., under Note* 1, *if a person says "I did owe the debt, but I paid it," the confession cannot be taken to prove the debt without also proving that it was paid.*

A plea of 'guilty' is a confession in the fullest degree, but a Court Martial is ordered to receive and report such evidence as may afford to the authority, which has discretion in carrying into effect the sentence, a full knowledge of the attendant circumstances.

LECTURE XIX.

COMPETENCY OF WITNESSES.

Interested witness.

FORMERLY all interested witnesses were refused, but, since the passing of Lord Denman's Act in 1843, all witnesses are taken, and it is for the court to judge of the credibility of the witness.

Incompetency.

There are two cases of incompetency to give evidence, *viz.:*

1. Prisoner and his wife.
2. Want of understanding.

So long as a man is actually on trial, his evidence (or that of his wife) cannot be taken; otherwise it can, however great his interest. Of course the court must judge of its trustworthiness.

Wife's evidence.

A man's wife can only give evidence against him where criminal violence from him to her is the charge.

Persons tried together cannot give evidence for or against one another. If the prisoner wish for the evidence of another prisoner, he can apply to be tried separately.

If, during the trial, the Court find no evidence against one of the prisoners, they may acquit him, and then call him as a witness.

Witness himself awaiting trial.

A man awaiting trial on the same charge, and called by the prisoner in his defence, would not be cross-examined, so as not to prejudice his own trial, and he need not reply to any question which would criminate himself.

A man thus awaiting trial could not be called as a witness for the prosecution; if his trial were over, he could be so called, as anything he said would not injure himself.

Evidence of accomplices, and of principal against accessory (*e. g.*, thief against receiver), is admissible, but must be received with great caution, and is generally considered to need confirmation. Accomplices.

A member of the court *may* give evidence, but it would be undesirable to put him on the court, if it were known that he would be a witness. Member of court.

In case of an appeal to a General Court Martial under Article of War 13, the soldier is *not* a prisoner, therefore he *is* competent to give evidence.

CASE 2. WANT OF UNDERSTANDING—such as in children and lunatics. Want of understanding.

The court must judge for itself, the incapacity is only co-extensive with the defect. The court may ask a child questions to ascertain the development of its mental faculties, its religious knowledge, and the sense it entertains of the consequences of perjury. In case of insanity, if the court be satisfied that the witness is momentarily sane, they may take his evidence; or if he were a monomaniac, and quite sensible as to the subject on which he is required to testify, he can be examined.

Want of religious belief no longer debars a witness from giving evidence. The law was altered in 1869. Such a witness makes a declaration, and if he depose falsely, he can be prosecuted for perjury.

Questions as to competency should be dealt with before the witness is sworn, but an objection may be raised at any stage. Questions as to credibility cannot be raised till after the witness is examined.

EXAMINATION AND CROSS-EXAMINATION.

The examination of witnesses is to be by ques-

tion and answer, the only exception being when the prosecutor is himself a witness. The old plan of letting a witness tell his own story, often allowed a witness to state a great deal of hearsay, and, in fact, to give illegal evidence, and though such portions of his evidence might be rejected, still impressions were sometimes thus made upon individual members, which the admissible parts of his evidence were not calculated to convey.

The evidence must be recorded in the first person, and, as nearly as possible, in the witnesses' own words.

Leading questions when allowed.

LEADING QUESTIONS are such as suggest the answer required. They are not allowed in the examination-in-chief, except perfectly introductory, or unless the witness be manifestly an unwilling one.

They are, however, allowed in cross-examination.

Questions would be allowed to be put to a child or an unintelligent savage, which would not ordinarily be allowed.

The Court must judge of the fairness of the question.

Opinion, or belief of witness.

As a rule, a witness can only be examined as to facts within his own knowledge or observation. His opinion or belief is not generally accepted. I do not mean that he must, in every case, have such certainty as to preclude all possibility of doubt; absolute certainty is not necessary, especially in cases of identity or of handwriting. A witness who falsely swears that he thinks or believes, may be convicted of perjury equally with the man who swears positively to that which he knows to be false. A further exception is the case of *experts*,—*i. e.*, scientific or professional men,—*e. g.*, a doctor may depose to the best of

his judgment as to the cause of a man's death, or as to a man's mental or bodily condition. Experts may depose as to handwriting. A ship-builder was permitted to give his opinion as to the sea-worthiness or otherwise of a ship which he had never seen, on the facts stated in evidence by others. 1 Phillips, 522

A witness may not read his evidence, but may refresh his memory by referring to notes made by himself (or by another, and examined by himself,) at or about the time of the act. Witness using notes.

The opposite party may demand to see these notes, and may cross-examine on them.

A witness may correct or explain anything in his evidence ; the Court may recall him to ask him if he can explain anything obscure in his evidence ; any such correction or explanation is to be separately recorded in the proceedings. No erasure nor alteration in previous entries is allowed.

The examination-in-chief *must* be confined to the points at issue.

Cross-examination is usually against accuracy or credibility of witnesses. A witness may be questioned as to facts stated by other witnesses, or as to motives by which he may be actuated. Much greater latitude is allowed than in the examination-in-chief. Cross-examination.

RESTRICTIONS UPON CROSS-EXAMINATION.

1. Questions, the answers to which would criminate the witness, *may be put*, but the witness cannot be compelled to answer them.

☞ *This applies also to questions which would criminate the husband or wife of the witness.*

2. Questions tending to degrade the witness may be put, and, *if relevant to the point at issue*, must be answered, provided they do not come under "(1)"

3. Questions *not* relevant to the point at issue, and tending to degrade the witness, may be put, but need not be answered. If the witness answer the question, *you must accept that answer whether true or not.* Evidence to prove the falsity of such answer could not be brought forward, because that involves a collateral issue.

There is *one* exception to this, *viz.:*

A witness may be asked whether he has been convicted of felony or misdemeanour, and if he refuse to answer, or deny it, evidence may be brought to prove it.

To explain the relevancy or otherwise of a question tending to degrade the witness,—on a trial for rape, the woman need not answer whether she has or has not had criminal connexion with *another* man; and if she deny it, you cannot bring evidence to prove that she has done so; but the prisoner might ask whether *he* had not, with her consent, previously to the alleged rape, had such intercourse, and, if she denied it, might bring evidence of the fact, because this *is* relevant to the point at issue.

1 Phillips, 505

Privileged communications.

A witness cannot be compelled to answer on privileged communications,—*e. g.*, such as may have passed between a client and his lawyer, husband and wife, or confidential communications between Government officers and their subordinates. A person employed by Government cannot be compelled to disclose his instructions, nor the names of spies, etc.; nor can a witness for the Crown be made to disclose through what channel information reached Government.

A witness may be examined as to what he stated on a former trial or out of court, or as to his own previous history; the court may check any unnecessary latitude. After cross-examination the witness may be re-examined, but not in new

matter, only to explain what may have arisen in cross-examination.

If a witness has been sworn, but not examined, the other party may cross-examine him; and a witness who has originally been called by the prosecutor, and cross-examined by the prisoner, may be called in the defence by the prisoner, and then cross-examined by the prosecutor.

A witness may be recalled by the court at any time, and questioned by it, but either party may cross-examine him with regard to this question and answer. If a question be objected to, whether put or not, it is to be entered on the proceedings, and the court would then be cleared to decide whether it should be put or not.

Impeaching credibility.

There are several ways of impeaching the credibility of a witness, *viz.*:

1. Cross-examining as to credit,—*i. e.*, making him contradict himself as to his own evidence.

2. By specific contradiction of his own evidence.

NOTE.—*Any statements made in examination-in-chief may be contradicted by evidence.*

Statements made in cross-examination may be contradicted by evidence if relevant, not if irrelevant.

3. By evidence as to general bad character, such as that he is not to be believed on oath, having been convicted of perjury.

4. By statements made by the witness out of court, provided that—

(*a.*) The statements were material to the point at issue before the court.

(*b.*) That the witness has been cross-examined on them.

The party whose witnesses are impeached may bring evidence to re-establish their credit, or to attack the credit of the impeaching witnesses.

APPENDIX A.

SOLITARY CONFINEMENT, M. A. 26, 27.

(*a.*) As a separate award, is not to exceed 14 days. A. W. 121.

(*b.*) AS PART OF A MIXED SENTENCE OF IMPRISONMENT AND SOLITARY CONFINEMENT, is not to exceed 14 days at a time, with intervals between the periods of solitary confinement of not less duration than such periods of solitary confinement. A. W. 126, 129.

(*c.*) WHEN THE SENTENCE OF IMPRISONMENT EXCEEDS 84 DAYS, then the solitary confinement must not exceed 7 days in each 28 days, with intervals between the periods of solitary confinement of not less duration than such periods. [From this it results, and is also separately laid down, that not more than 84 days' solitary confinement shall be given in 336 days' imprisonment.] A. W. 126.

☞ *In any period of imprisonment exceeding* 84 *days, to obtain the greatest amount of solitary confinement that can be given, divide the whole term of imprisonment by* 4.

(*d.*) SHOULD A CONFIRMING OFFICER COMMUTE A SENTENCE OF CORPORAL PUNISHMENT TO IMPRISONMENT, then the solitary confinement must not exceed 7 days at a time, with intervals between the periods of solitary confinement of 7 days. [*Note—intervals* of 7 *days, no matter what the periods.*] M. A. 24. A. W. 120.

(*e.*) SOLITARY CONFINEMENT CANNOT BE AWARDED FOR THE FOLLOWING OFFENCES, *viz.:*

1. Offences against Mutiny Act 17 and Article of War 80, when tried by a General Court Martial, because not mentioned in Mutiny Act 17.

2. Making a false confession of desertion to his commanding officer. A. W. 46.

3. Attempting to commit suicide. A. W. 104.

(*f.*) If the prisoner be intended to be sent to Millbank, the court should not award solitary confinement. Q. R., Appendix B.

Q. R., VI, 61. (*g.*) Solitary confinement cannot be given unless medical certificate allow its being gvien.

Bengal Regulations. (*h.*) Solitary confinement is not to be inflicted in India in April, May, June, or at any season of unusual heat.

A. W. 122. (*i.*) Solitary confinement not to be awarded where it is impracticable to inflict it.

(*j.*) When a sentence of penal servitude under Mutiny Act 101 is commuted to imprisonment, solitary confinement cannot be given.

(*k.*) When the Queen commutes a sentence of death, under Article of War 143, to imprisonment, no solitary confinement can be given.

(*l.*) When a sentence of death under Article of War 145 is commuted to imprisonment, no solitary confinement can be given.

M. A. 16. M. A. 20. (*m.*) When sentence of death or penal servitude is commuted to imprisonment, the solitary confinement is not to exceed 7 days at a time with intervals of 7 days between the periods of solitary confinement; and if the imprisonment be over 84 days, the solitary confinement shall not be more than 7 days in each 28 days' imprisonment.

APPENDIX B.

PUNISHMENTS AWARDABLE TO A WARRANT OFFICER.

(*a.*) BY SENTENCE OF GENERAL COURT MARTIAL ONLY:

For offences for which the Mutiny Act awards these punishments—

Death. Penal servitude.

For offences against Mutiny Act 17—

Imprisonment with or without hard labour not exceeding two years.

Fine. Refund to make good loss or damage. For other offences—

Imprisonment with or without hard labour and solitary confinement not exceeding two years. A. W. 128. Para. 2.

(*b.*) BY SENTENCE OF GENERAL COURT MARTIAL, *or if not holding an honorary commission*, BY DISTRICT OR GARRISON COURT MARTIAL: A. W. 111.

Dismissal.

Suspension from rank, pay, and allowances for a stated period. A. W. 128.

Reduction in present grade of warrant officer to a lower place.

Reduction to any place ordered in a lower grade.

If originally enlisted as a soldier—

Remanded to regiment or corps to which he formerly belonged, there to occupy the position he held before becoming a warrant officer.

Remanded to regiment or corps, there to serve as a private soldier.

☞ NOTE 1.—*By a General Court Martial he could get dismissal or reduction to the ranks for offences against Mutiny Act* 17, *but he could not get suspension, or the other reductions in grade for those offences by that court.* M. A. 17. A. W. 80.

NOTE 2.—*Imprisonment can only be given to a warrant officer by a General Court Martial.* A. W. 128.

NOTE 3.—*A warrant officer cannot be awarded corporal punishment at all.* A. W. 128.

NOTE 4.—*The Government of an Indian Presidency may reduce a warrant officer to lower grade of warrant rank, or remand him to regimental duty in the rank held by him before becoming a warrant officer.* A. W. 128.

For composition of court, confirmation, etc., see pages 22, 23, 65, 69.

APPENDIX C.

OFFENCES FOR WHICH AN OFFICER MUST BE SENTENCED TO BE CASHIERED IF CONVICTED BY A GENERAL COURT MARTIAL.

A W. 79. * Scandalous conduct.

A. W. 84, 89. * False returns.

A. W. 35. * Perjury

A. W. 69. * Breaking arrest.

A. W. 76. * Drunk on duty under arms.

A W. 96. * Refusing to assist, or resisting the civil power.

A. W. 63. * Impeding or refusing to assist the Provost Marshal.

A. W. 88. Misapplying public money.

A. W. 91. Demanding extra billets or taking money to free from billets.

A. W. 40. Drawing sword on, or refusing to go under, arrest, when ordered by any other officer, even a junior, *when concerned in a fray.*

A. W. 39. Traitorous or disrespectful words against Queen or Royal Family.

A. W. 44. Attempting or persuading to desert, or harbouring a deserter.

Certain offences on service in the field, *viz.:*

A W. 59—68.
- Sending flag of truce without authority.
- Giving a different parole.
- Spreading alarming reports.
- Using words calculated to produce despondency.
- Disclosing numbers to the enemy.
- Leaving ranks without permission.
- Leaving guard or post, or becoming prisoner by neglect.
- Irregularly seizing supplies.
- Taking fees from sutlers.

Those marked with an asterisk, thus (*) are the most important, and should be learned.

M. A. 76, see also M.A. 39. A commissioned officer convicted by a civil superior court, or court of record, of resisting or not assisting the civil power, is to be thereupon deemed to be cashiered.

A. W. 20. An officer sentenced to penal servitude is *not* cashiered, but on such sentence being confirmed, he ceases to belong to the Service.

M. A. 87, see also M.A. 39. An officer breaking the laws about billets, and convicted before two or more Justices on the oath of two credible witnesses, is to be deemed to be cashiered.

APPENDIX D.

MATTERS COGNIZABLE BY GENERAL COURTS MARTIAL ONLY.

Offences, civil, when tried by Court Martial.	M. A. 101.
All offences by commissioned officers.	A. W. 143, 144, 145.
Appeals from decision of a Regimental Court of Enquiry.	A. W. 12.
MUTINY, conspiring to, concealing knowledge of.	M. A. 15; A. W. 36.
INSUBORDINATION, striking, or offering violence to superior officer, in the execution of his office.	M. A. 15; A. W. 37.
DISOBEYING LAWFUL COMMAND OF SUPERIOR OFFICER.	M. A. 15; A. W. 38.
SENTRY, sleeping on, or leaving post, without being properly relieved.	M. A. 15; A. W. 57.
OFFENCES IN THE FIELD, CAMP, GARRISON OR QUARTERS, *viz.*:	
Doing violence to bringer of provisions.	* A. W. 58.
Holding correspondence with, or relieving the enemy.	M. A. 15;
Misbehaving before the enemy; shamefully abandoning post.	A. W. 51. M. A. 15; A W. 52.
Leaving post in search of plunder.	* A. W. 53.
Treacherously making known the watchword.	* A. W. 54.
Occasioning false alarms in camp on service.	* A. W. 55.
Casting away arms in the presence of the enemy.	* A. W. 56.

MATTERS WHICH CAN BE TRIED ONLY BY A DISTRICT COURT MARTIAL,—*i. e., by no other court higher or lower.*

Making a false statement to his commanding officer that he is a deserter.	A. W. 46.
Soldier appealing to a Court Martial, when fined for drunkenness by commanding officer, and denying the fact that he was drunk.	A. W. 77.
Soldier, private, when tried by Court Martial for drunkenness *not* on duty, this being the only charge.	A. W. 78.
Making a wilfully false answer on attestation.	M. A. 48.

* *The crimes marked with an asterisk, not being provided for in the Mutiny Act, are not punishable with death or penal servitude, unless Article of War* 189 *be suspended, when they might be so punished out of the United Kingdom.*

APPENDIX E.

CRIMES FOR WHICH SENTENCE OF DEATH OR PENAL SERVITUDE CAN BE AWARDED BY GENERAL COURT MARTIAL.

M. A. 15, No. A. W. — Treating with a rebel, or enemy, without proper authority.

M. A. 15:

A. W. 36. — Mutiny, sedition, or not endeavouring to suppress, or not informing of known mutiny.

A. W. 37. — Striking or offering violence to superior officer *in the execution of his office;* or, when prisoner in military prison, striking or offering violence to a military visitor or other superior officer in the execution of his office.

A. W. 38. — Directly disobeying the lawful command of his superior officer.

A. W. 42, 44. — Desertion, or attempting to desert.

A. W. 51. — Corresponding with, or giving intelligence to, the enemy. Harbouring or protecting the enemy.

A. W. 52. — Misbehaviour before the enemy.

A. W. 57. — Shamefully abandoning, or delivering up a post, or speaking words to induce another to do so. Sentry sleeping on post, or leaving it before being regularly relieved.

Also, *not in Mutiny Act,* and therefore death or penal servitude not awardable at home, or abroad unless Article of War 189 be suspended—

A. W. 53. — Leaving commanding officer or post to plunder.

A. W. 54. — Treacherously making known the watchword.

W. A. 55. — Intentionally causing false alarms in camp, &c.

A. W. 56. — Casting away arms, &c., in presence of the enemy.
[*This could be tried under Article of War 52.*]

A. W. 57. — Doing violence to bringer of provisions when employed in foreign parts. Forcing safeguard. Breaking into house or cellar for plunder.

THERE IS ONLY ONE CRIME WHICH IS LIABLE TO PENAL SERVITUDE, BUT NOT TO DEATH, *viz.*:—

M. A. 17; A. W. 80. — Persons concerned in the care or distribution of money or stores for Her Majesty, embezzling, fraudulently misapplying, wilfully damaging, stealing, or receiving the same knowing them to be stolen, or being concerned therein, or conniving thereat.

APPENDIX F.

OFFENCES TRIABLE BY GENERAL COURT MARTIAL OR DISTRICT OR GARRISON COURT MARTIAL.

DIVINE SERVICE, absence from—behaving irreverently at—offering violence to a chaplain.	A. W. 31.
PERJURY.	M. A. 96; A. W. 35.
Insubordination, refusing to go under arrest when in a fray.	A. W. 40.
Traitorous or disrespectful words against the Queen or Royal Family.	A. W. 39.
Certain offences in field, camp, garrison, or quarters, amongst which are:	
Leaving ranks without orders. Leaving guard, picquet, or post. Being taken prisoner through negligence. Taking bribes. Impeding Provost-Marshal. Breaking arrest, escaping from confinement.	A. W. 59—69.
Disgraceful conduct.	A. W 80—82.
False returns.	A. W. 84—86.
Making false entries, or erasures, &c., or by a false document conniving at embezzlement.	A. W. 87—89.
BILLETS, demanding more than number, or taking money to free from.	A. W. 91.
RECRUITING, contravening regulations regarding.	A. W. 95.
Refusing to assist the civil power, or improperly protecting a soldier or other person from the civil power.	A. W. 96, 97.
Fighting or promoting a duel, or not doing his best to prevent a duel.	A. W. 98.
Desertion.	A. W. 42.
Absence without leave over 21 days.	A. W. 136.

APPENDIX G.

COURTS OF ENQUIRY.

A. W. 13. (*a.*) Court on a soldier's complaint as to pay or clothing.

A. W. 82. (*b.*) Court on the case of a soldier becoming maimed or mutilated, *except* by wounds in action.

A. W. 167. (*c.*) Court to record illegal absence over 21 days. *Takes evidence on oath.*

☞ *Declaration recorded in regimental books. If soldier do not surrender, or be not apprehended, this record has the effect of a conviction for desertion. If he surrender, or be apprehended, this record is proof of absence, and loss of kit.*

A. W. 165. (*d.*) Medical Board on officer wounded in action. (Five or three medical officers.)

A. W. 166. (*e.*) Discharge Board on soldier to be discharged for any cause. (Three officers: 2nd in command, president; and next two seniors, members.)

A. W. 13. (*f.*) Court to assess barrack damages.

The above are all that are mentioned in the Articles of War.

There are two specially ordered by the Queen's Regulations, *viz.:*

Q. R., IV, 18. Court of Enquiry on officers taken prisoners of war. *(The court make a special declaration.)*

Q. R., XXI, 13 to 18. Board held on a soldier's medal becoming deficient from any cause. (*Captain and two subalterns.*)

Q. R., VI, 67 to 71. A Court of Enquiry can be assembled at any time, by any commanding officer, to enquire, for his information, into any matter he may direct.

They are to give their opinion or not to do so according to the instructions of the convening officer. Each member signs proceedings. They cannot compel civilian witnesses to attend; and cannot administer oaths, except Board "*c.*"

Medical officers are exempt from serving on any but Medical Boards.

Simmons, 337 If a Court of Enquiry be held on the conduct of an officer, he must attend it if ordered to do so, but cannot be compelled to take any part in the proceedings. He has no right to cross-examine witnesses. It is a closed court, to which the general public cannot claim admission as they can to a Court Martial.

QUESTIONS FOR EXAMINATION.

1. Define military law, and martial law. Pages 2, 3.

Of what does the former consist?

In what cases would the latter be in force?

2. What are the Mutiny Act and Articles of War? Page 6.
Under what authority are they passed, and how long do they remain in force—

(*a.*) At home?
(*b.*) In India?

What must be particularly provided for by the Mutiny Act only? Page 6, para. 4.

3. Who, generally, are liable to the Mutiny Act?

When does a recruit become amenable to military law? Page 7.

How would an offence committed by him before this be dealt with?

4. When are the following liable to trial under the Mutiny Act: Pages 7, 8.

Militia.
Permanent Militia Staff.
Volunteers.
Pensioners.

5. What limitation of time is there as to trial of an offence committed by a regular soldier? Page 8.

6. Are officers and soldiers of the Indian forces under the Mutiny Act? Page 9.

7. Who can confirm General Courts Martial at Home, at Malta, at Poona, at Umballa? Can they confirm them in all cases? Pages 10, 11.

8. Trace the authority under which a District Court Martial is assembled at Umballa? Who would confirm it— Page 12.

(*a.*) On a warrant officer? Page 23.
(*b.*) On a private soldier? Pages 10, 11.

9. Who can convene and confirm Regimental and Detachment Courts Martial? Page 14.

Under what authority are they held?

Pages 16—27. 10. Enumerate the different descriptions of European Courts Martial, the punishments they have power to give, and the number of members of which they must be composed in India.

See App. D. 11. What matters can be tried by a General Court Martial only?

12. When and where can Detachment General Courts
Pages 20, 21. Martial be held? How are they composed?

What offences can they try? and by whom and how finally confirmed?

Page 22. 13. Give composition of a District Court Martial for the trial of a warrant officer?

Page 29. 14. In what cases can a soldier demand to be tried by Court Martial instead of taking a punishment from his commanding officer? Are there any exceptions to this rule?

Lecture V, Appendix C, Page 31. 15. What is the smallest punishment that a General Court Martial can give to an officer convicted of breaking arrest? When is a junior officer empowered by the Articles of War to place his senior officer under arrest? What is the punishment should the senior be tried for refusing to go under arrest?

Page 32. 16. How soon must a crime be made out against a soldier after his being confined? When should his case be investigated? How soon must he be tried?

do. 17. Does putting arms in a prisoner's hands condone the offence?

Page 27. 18. What punishments can officers commanding troops or companies, and what can commanding officers give for minor offences?

Page 93. 19. How many days absence without leave can commanding officer dispose of himself?

Page 33. 20. Up to what time can commanding officer after awarding a punishment alter his mind and send the man for trial by Court Martial?

do. 21. What course does commanding officer pursue if he consider the case one for a Regimental or District Court Martial?

Pages 28, 93. 22. What course does commanding officer pursue if a man commit both an important and a minor offence,—*e. g.*, a man is absent without leave for 6 days, and is then found in barracks drunk.

23. What course does commanding officer pursue, should he wish to try a man by a lower description of court than that which the offence ordinarily requires ? Page 34.

24. Has the General, or other superior officer, to whom the application for a Court Martial is made, the discretionary power of dispensing with the trial ? Page 35.

25. Can non-commissioned officers and soldiers be tried by Regimental or Detachment Courts Martial for simple drunkenness ? Page 28. A. W. 78.

26. How are the President, Judge-Advocate, and members appointed ? Pages 13, 17.

27. Can a subaltern sit on a General Court Martial at all ? If so, are there any cases in which he cannot so sit ? Pages 12, 17.

28. What are the duties of a Judge-Advocate ? What would be done on a General Court Martial if he were taken ill ? Could they go on without him ? Page 42. Page 17.

29. When must the prisoner be warned ? Page 36.

30. Who summons the witnesses ? How could their attendance be procured ?

(*a.*) Military witnesses in the district.
(*b.*) Do. do. in another district. Pages 36, 37.
(*c.*) Civilian do. in the place.
(*d.*) Do. do. at a distance.

31. What would be done if the prisoner wished an unreasonable number of witnesses summoned, or persons at a great distance ? Page 37.

32. What are the duties of the President of a Court Martial ? How would contempt of court be dealt with, if committed— Lectures VI and VII. Pages 38, 39.

(*a.*) By the prisoner ?
(*b.*) By any other military person ?

33. Has the President a casting vote ? If not, what would happen if the votes were equally divided ? Page 39.

34. Suppose, in a sentence of imprisonment, four members vote for 56 days, three for 84 days, and two for two years, what would be done ? How many days would the man get, supposing the sentence, which would probably be given, to be confirmed. Page 40.

35. What would be done if the President were to die or be taken ill ? Can the next senior take his place ? do.

Page 40. 36. If a member be ill, can the court go on without him? If he recover can he return and take his seat again?

Pages 43, 45. 37. What is done if the prisoner or Judge-Advocate be taken ill?

Pages 41, 42. 38. If on a General Court Martial of nine members, in India, the prisoner were convicted, and before sentencing him the court adjourned to wait for evidence of character, meanwhile one member dies: what would be the effect? Could a new court be assembled?

Lecture VI. Page 42. 39. State the duty of a Deputy Judge-Advocate at a General Court Martial. Should he and the court differ on any point, and the court decline to take his advice, should he record the fact on the proceedings?

Page 44. 40. Who can act as prosecutor? May he be a witness? Is he sworn?

Page 46. 41. What individuals may NOT act as interpreters?

Page 47. 42. Up to what time can the charge be amended? Are there any exceptions to this rule?

Page 48. 43. What are the hours for sitting—
(*a.*) In India?
(*b.*) Elsewhere?
Would it be legal to hold a court at any other hour?

Pages 42, 48. 44. What is done should prisoner challenge the President, any member, the Judge-Advocate, or generally object to the whole of them?

Page 49. 45. Give some of the ordinary grounds on which challenge would be allowed as valid.

Page 42. 46. Can the Deputy Judge-Advocate be called as a witness?

Page 50. 47. What different courses may the prisoner take when called upon to plead on arraignment? What is done in each case?

Pages 51, 82. 48. Can several prisoners be arraigned and tried together?

Page 50. 49. Name some of the commonest pleas in bar of trial. When should the objection be brought forward?

Page 51. 50. What should the court do should the prisoner show signs of insanity?

Page 53. 51. Define an oath.

52. What is meant by the terms— Page 55.
Examination-in-chief?
Cross-examination?
Re-examination?
How is the last limited?

53. Give the order of the addresses made by the prosecutor, prisoner, and Judge-Advocate. Pages 53, 55, 56.
(*a.*) When there are no witnesses for the defence.
(*b.*) When there are witnesses for ditto.

54. In what rare instances is the prosecutor allowed to call witnesses after the defence, and how is the evidence they may give limited? Page 56.

Can the prisoner call witnesses to contradict their evidence or not? Page 59.

55. What different forms may the defence assume? Page 56.

56. Is "misfortune or chance" a sufficient defence? Page 59.

57. What must the court be particularly careful not to permit the prosecutor to state in his reply? do.

58. Write down the finding if the prisoner was insane when he committed the act? Page 61.

59. Give examples of minor offences of which a man may be convicted in place of the higher offences with which he stood charged, but which were not proved? Page 62.

60. What do you mean by a special finding? Give an instance. Page 61.

61. In the case of a soldier, what matters have to be deposed to, after conviction, and before sentence? Is any extra question put on trial for desertion? Page 63.

62. How are former convictions, military and civil, to be proved? Page 64.

63. For what offences is the sentence of cashiering peremptory? See App. C.

64. How must the sentence be worded should it be one of imprisonment, and the prisoner be already undergoing a previous similar sentence. Page 67.

65. For what offences does a soldier, if convicted, *necessarily* incur forfeitures of *good conduct* pay, pension, medals, and annuities? Page 68.

66. If, on revision, the court determine slightly to alter their finding, what must they do? Page 70.

Page 69. 67. To whom are the proceedings of Courts Martial sent—

(*a.*) At home ?
(*b.*) Abroad ?
(*c.*) In India ?

Page 71. 68. After completion of proceedings, how are they prepared for transmission, with regard to erasures, interlineations, marginal references, docketing, &c.

Page 72. What margin is left, and are they made in duplicate or not, and on one or both sides of the paper ?

do. 69. What is done with the original charge as sent by the convening officer, and with annexures ?

do. 70. In what different ways may the confirming officer signify his decision as to confirming or not confirming a sentence in whole or in part ?

What can he do if the sentence be illegal ?

do. 71. In India, if an officer be tried under 101st section Mutiny Act for a civil offence, and penal servitude awarded, what must be done before it can be carried into effect ?

Page 73. 72. How may a sentence of death be commuted, and by whom ?

Page 74. 73. How may a sentence of corporal punishment be commuted or mitigated.

do. 74. Who can commute a sentence of cashiering ?
To what can it be commuted ?

do. 75. When can forfeitures be mitigated or remitted ?

do. 76. Can officers who confirm minor Courts Martial commute or remit punishments ?

do. 77. How may stoppages of pay be remitted and by whom ?

do. 78. What can a confirming officer *not* remit ?

Page 75. 79. What steps are taken to carry out a sentence of penal servitude—

(*a.*) At Home ?
(*b.*) In India or the Colonies ?
(*c.*) Out of Her Majesty's dominions ?

Page 76. 80. What protection is given to members of Courts Martial against civil actions brought against them for their conduct on such courts ?

81. Who appoints place of imprisonment— Page 77.
(*a.*) For sentence of General Court Martial?
(*b.*) Ditto of other courts?
From what date does it commence to count?

82. Who can give an order for a man to be moved from one prison to another— Pages 77, 78.
(*a.*) At Home?
(*b.*) Abroad?
(*c.*) In India?

83. What limits are there as to the amount that can be daily stopped from a man's pay for fines for drunkenness, stoppages, &c.? Page 78.

84. To what points must particular care be given in framing charges? Page 79.

85. What are alternative charges and disjunctive accusative charges? Is it correct to charge a man with them? Page 83.

86. In what manner with reference to charges does a Court Martial differ from a civil court? do.
Is there any exception?

87. What must be fully stated in the charge, should an officer be charged with scandalous, or a soldier with disgraceful, conduct? Page 80. Q. R., App. A, 4.

88. Define "a crime," and "perjury." Pages 85, 86, 90.

89. Is one witness sufficient to prove the crime of perjury? Page 87.
If not, how must it be proved?

90. What exceptions are there to the rule that a crime committed to be punishable must have been committed wilfully and intentionally? Pages 85, 86.

91. Frame a charge for receiving stolen goods. Pages 84, 85.

92. What is the punishment for perjury for— Page 86.
(*a.*) Officer?
(*b.*) Other person?

93. Two prisoners are in a guard-room; one makes the other take a solemn oath not to reveal what he is going to tell him, and then confesses that he committed a murder. Page 137.
Could this man's evidence be taken against the prisoner as to what was then confessed to him?

Page 87. 94. How do the Indian Articles of War differ from the English ones about trials for perjury ?

App. E. Page 67. 95. What crimes are punishable with death ?

If, on a General Court Martial of twelve members seven vote for death, and five for penal servitude, would sentence of death be carried ?

Pages 18, 19, 24, 26. 96. For what crimes can fines be inflicted, and by what courts ?

Page 89. 97. Distinguish 'mutiny' from 'insubordination.'

do. 98. What constitutes an 'offer of violence ?'

Page 90. How do Indian Articles of War differ from English as to the acceptation of this term ?

(1) Page 97, A. W. 75. (2) Page 90, A. W. 38. (3) Page 31. A. W. 69. 99. Frame charges against an officer, who, being at a bandstand in plain clothes, refuses to obey the order of a superior who directs him to leave the ground; and when ordered under arrest by such superior, still remains till the band has finished. There being a standing order that uniform is to be worn on such occasions.

Frame three charges.

Page 92. 100. Can a man desert whilst on furlough ?

do. 101. How would you charge a man, who whilst on pass, had attempted to desert, by purchasing a passenger ticket, and going on board a vessel bound for New York.

Page 93. 102. What is done in case a man confesses desertion—

(*a.*) When not serving ?
(*b.*) When serving ?

Page 94. 103. If this confession prove false, how can he be punished ?

do. 104. If it prove true, who has the power of dispensing with his trial; and, if trial be so dispensed with, what forfeitures does the man incur ?

Page 96. 105. If a recruit desert after attestation, but before joining his regiment, what may be done with him ?

do. 106. What are the forfeitures *necessarily* incurred by a confirmed conviction of desertion, and to what other punishments *may* a General Court Martial also sentence a convicted deserter ?

107. State, shortly, the substance of the Articles of War with regard to drunkenness. A. W. 76—78. Pages 97, 98.

108. What distinction may be drawn between 'embezzling' and 'fraudulently misapplying?' Page 99.

109. Frame a charge or charges against a soldier, who, having been given a watch value £ 5, by the Sergeant-Major, to convey to a watchmaker, pawned the same for £ 2, spent the money, and returned to barracks drunk. Page 102, 84.

110. What is the punishment for a man losing his medal? What is done as soon as the loss is discovered? See App. G and page 105.

111. What crimes can be tried under the 105th Article of War? Page 106.

112. For what offences are men *not* to be jointly charged? Page 82.

113. Frame a charge against a man for malingering. Pages 101, 84.

114. Ditto ditto ditto for leaving post as sentry. Pages 96, 81, 84.

115. Ditto ditto ditto for making a false statement to his commanding officer. Pages 82, 84.

116. Ditto ditto ditto found in possession of a watch value £ 5, recently stolen. Pages 80, 84.

117. Ditto ditto maiming himself. Pages 80, 84, 123. A. W. 82.

118. Ditto ditto attempting to strike a non-commissioned officer with his clubbed rifle, but missing him. Pages 89, 90, 84.

EVIDENCE.

119. Define 'evidence.' Is it the same as 'proof?' Page 118.

120. When is a matter considered legally proved? Page 119.

121. Enumerate the five laws of evidence.

122. What are legal 'presumptions?' State the principal ones. Pages 122, 123.

123. What are 'points at issue?' Page 119.

124. Are questions admissible which do not bear directly on these points? Page 120.

125. What are 'res gestae?' Page 121.

126. May writings and words of co-conspirators be brought up as collateral evidence against one of their number, or are they treated as hearsay? do.

Page 129. 127. What do you mean by 'secondary evidence?' When is it admissible?

Page 125. 128. What is 'hearsay evidence' in the fullest meaning of the term? When is 'hearsay' admissible?

Page 127. 129. When are dying declarations admissible?

Page 130. 130. What is 'presumptive proof?' What is 'circumstantial evidence?'

Page 132. 131. Can a Court Martial demand the minutes of a Court of Enquiry?

do. 132. Give, shortly, the principal rules with regard to documentary evidence.

Pages 111, 112, 133. 133. What documents are especially *made* legal evidence by the Mutiny Act.

Page 135. 134. Is the evidence of experts in handwriting admissible?

Page 136. 135. What is the rule about confessions?

Page 138. 136. What persons are incompetent to give evidence?

do. 137. Three prisoners, A, B, C, have been concerned in the same affair, and have been ordered to be tried. A has been tried and convicted. B and C are awaiting trial. Can the evidence of A and C be taken against B? and can they be called by B for his defence?

Page 140. 138. What are 'leading questions?' Are they allowed?

Pages 141, 142. 139. What restrictions are there as to cross-examination?

Page 143. 140. How may the credibility of a witness be impeached?

GENERAL QUESTIONS.

See App. A. 141. State all you know of the rules about solitary confinement as laid down in the Mutiny Act, Articles of War, Queen's Regulations, and Local Regulations. To whom can it be awarded by sentence of Court Martial and for what crimes can it *not* be awarded.

See App. G. 142. Give the rules about Courts of Enquiry, enumerating those specially mentioned in the Articles of War and Queen's Regulations.

Q. R., IV, 18. A. W. 171. 143. What is done when an officer or a soldier returns from being prisoner of war?

144. What punishments can a visitor or visitors of a military prison award to a prisoner misbehaving therein. M. A. 83.

145. State, shortly, the substance of the Articles of War with reference to drunkenness. A. W. 77, 78. Pages 97, 98.

146. What are the provisions of the Mutiny Act with regard to Courts of Request? M. A. 99. Page 114.

147. What are the liabilities and exemptions of soldiers with regard to civil debts? M. A. 40, 99.

148. State fully the procedure with regard to taking the evidence of a witness at a Court Martial, from the time the witness is called into court till he withdraws. Lecture VIII.

149. What Courts Martial can award a sentence consisting partly of imprisonment and partly of corporal punishment? Pages 19, 23, 26.

150. State the rules about the award of corporal punishment. Who are liable to it? Who can award it? When and where can it be inflicted? Who can commute it? And to what can it be commuted or mitigated? Lecture XV.

151. To what punishments are warrant officers liable— See App. B.

(*a.*) By sentence of a General Court Martial?

(*b.*) By sentence of District or Garrison Court Martial?

152. What documentary evidence may be received, under the provisions of Mutiny Act and Articles of War at the trial of a soldier by Court Martial for desertion? Pages 111, 112.

153. When is an officer or soldier *not* liable to a second trial by Court Martial for an offence for which he has been previously arraigned? M. A. 39. A. W. 163.

154. State the several punishments awardable by General Court Martial under Mutiny Act 17 to an officer, a warrant officer, and a soldier respectively? Can an officer be cashiered, or an army schoolmaster reduced for offences against this article? If not, why not? M. A. 17. Pages 18, 20, and App. B. A. W. 137. Pages 99, 103, 67.

155. In what case only is evidence taken at the revision of a Court Martial, and as to what could evidence then be taken? Page 71.

M. A. 25. Page 74. 156. Who can commute a sentence of cashiering, and to what can it be commuted—

(*a.*) In the case of an officer of the British, or local Indian Army?

(*b.*) In the case of an officer of the Indian staff corps?

[Be cautious in answering this.]

Page 126. 157. Why is hearsay evidence inadmissible?

Page 136. 158. Could the proceedings of a Court of Enquiry be adduced before a Court Martial as evidence of the facts deposed to before such courts? What could they be brought forward to prove? Is the Board on illegal absence (before which evidence is taken on oath), an exception, or not, to this rule?

M. A. 60. Page 112. 159. What penalty is incurred by a paymaster who withholds a soldier's pay for more than one month?

M. A. 31. Pages 77, 78. 160. Suppose a regiment in India to be ordered Home, and that it is desired to send Home with it a soldier of that regiment who is undergoing a long period of imprisonment in Calcutta jail. Who can order the soldier's removal from that prison, and what other document would have to be made out?

A. W. 111. Page 23 161. Who would convene a District or Garrison Court Martial to try a warrant officer—

(*a.*) At Home?

(*b.*) In India?

Page 22. How many officers would be on the Court in each case?

Page 115. 162. What punishments can be awarded by a Court Martial to a hospital apprentice?

MILITARY LAW

AS APPLICABLE TO PERSONS SUBJECT TO THE INDIAN ARTICLES OF WAR.

I PROPOSE to take the headings of the subject in the same order as has been followed in the preceding Lectures on Military Law as applicable to persons subject to the Mutiny Act, only noticing those points in which Indian Military Law *differs* from what I may call English Military Law.

Indian Military Code.

The written part of the Code consists of—

1. The Indian Articles of War.
2. The Military Presidency Regulations.

The Indian Articles of War are included in an Act of the local Legislature, and thus, in India, with respect to the persons amenable to them, take the place of the Mutiny Act and Articles of War in the English Code; whilst, over all persons in or connected with the Indian forces, the Presidency Regulations take the place of the Queen's Regulations.

Duration of the Indian Articles of War.

The Indian Articles of War, being in fact a portion of an Act of the local Legislature, remain in force till repealed.

Persons amenable to I. A. W.

The persons amenable to the Indian Articles of War are, generally, all persons serving in or attached to the Indian Army, as well as the native establishment attached to European troops in India. The only persons in the Indian Army not so liable are—

1. European commissioned officers.
2. British-born subjects of Her Majesty, or their legitimate christian lineal descendants.

I. A. W., page 3.

These two classes are liable to trial only under the Mutiny Act and English Articles of War, and
I. A. W. 123. can only be punished under the Indian Articles of War for contempt of court. Americans, or christian Europeans *not* British-born, belonging to the Indian army, *are* liable to trial under the Indian Articles of War, but the court must consist of European officers only.

The classes of persons amenable then are:

1. Commissioned officers other than European.
2. Persons in the subordinate medical department.
3. Warrant and non-commissioned officers, and *unattested* hospital attendants.
4. Armed soldiers, including *unattested* recruits.
5. Others enlisted and attested,—*e. g.*, *lascars*, *syces*, *mahouts*, *grasscuts*, *etc.*
6. Followers of the Army, *public or private*.

Note the unattested persons who are liable, *viz.*:

(*a.*) Hospital attendants.
(*b.*) Recruits.
(*c.*) Followers.

There is *no* 'halfpay list,' and native officers are not liable to trial by Court Martial after removal from the service.

Native non-commissioned officers and soldiers are not liable to trial by Court Martial after leaving the service by discharge, dismissal, or by being pensioned.

The European officer, non-commissioned officer or soldier is so liable subject only to the limitation of time.

Time of limitation. I. A. W. 98. The time of limitation is the same as under the English Articles for natives *during service*.

AUTHORITY UNDER WHICH INDIAN COURTS MARTIAL ARE HELD.

The "Indian Council's Act" authorizes the Indian Legislature to frame Articles of War for the native officers, soldiers, etc., in the native Indian forces, and to authorize Courts Martial for the trial of such persons.

The Indian Articles of War, which were passed by the Indian Legislature in 1869, give the power of making orders and issuing warrants for holding Courts Martial to— I. A W., Part III, h.

(*a.*) The Governor General of India in Council.

(*b.*) The Governors of Madras and Bombay in Council.

(*c.*) The Commander-in-Chief of any Presidency.

The Commander-in-Chief of a Presidency cannot authorize trials in another Presidency, except in the case of native troops belonging to his Presidency, and serving in another, having been ordered by the Governor General to continue subject to his orders. I. A. W., Part III, g, i.

The different kinds of Courts Martial are: I. A. W. 72.

1. General Courts Martial.
2. Detachment General Courts Martial. [Two kinds.]
3. District or Garrison Courts Martial.
4. Regimental Courts Martial.
5. Regimental Detachment Courts Martial.
6. Detachment Courts Martial.
7. Summary Courts Martial. [Two kinds.]

A General Court Martial may be appointed by— G. C. M. by whom convened. I. A. W. 73.

(*a.*) The Commander-in-Chief of a Presidency.

(*b.*) Any officer authorized to do so by a warrant from the Commander-in-Chief of a Presidency.

(*c.*) Any officer in actual command of native troops, authorized to do so by Governor General in Council, or the Governor of a Presidency in Council.

(*d.*) Any officer commanding native troops *not attached to the forces of a Presidency*, authorized to do so by warrant from the Commander-in-Chief in India under the authority of the Governor General of India in Council.

D. G. C. M. by whom convened. I. A. W. 77.

A Detachment General Court Martial may be appointed by—

(*a.*) The Commander-in-Chief of a Presidency.

(*b.*) Any officer holding a warrant from the Commander-in-Chief of a Presidency to convene such courts.

(*c.*) *Without warrant*, by officer commanding troops, on complaint made of an offence against the person or property of any resident of the place.

☞ NOTE.—*These courts cannot be held in British India, nor in the dominions of Indian States in alliance with Her Majesty, wherein Her Majesty's forces are permanently stationed.*

D. C. M. by whom convened. I. A. W. 79.

A District or Garrison Court Martial may be appointed by—

(*a.*) The Commander-in-Chief of a Presidency.

(*b.*) Any officer holding a warrant from him to convene such courts.

(*c.*) Any officer in actual command of native troops authorized to do so by order in Council of Governor General of India, or of Governors of Madras or Bombay.

(*d.*) Any officer commanding native troops *not* attached to a Presidency, who holds a warrant from the Commander-in-Chief in India under the

authority of the Governor General of India in Council.

NOTE.—*A District Court Martial for trial of a warrant officer, etc., of the Indian Army is convened as above; whereas for warrant officers who are under the Mutiny Act, it must be convened by the officer commanding the Presidency.*

A Regimental Court Martial may be appointed by the officer commanding any regiment or corps. *No warrant.* I. A. W. 83.

A Regimental Detachment Court Martial, by the officer commanding a detachment of his own regiment or corps. *No warrant.* I. A. W. 86.

A Detachment Court Martial, by— I. A. W. 87.

(*a.*) Officer commanding any station, force, or detachment of men of different regiment or corps. *No warrant.*

(*b.*) On the line of march, or on board any vessel, for trial of offences not ordinarily triable by Regimental Court Martial, by officer commanding the detachment. *No warrant.*

NOTE.—*Mutiny, desertion, and disgraceful conduct cannot be so tried.*

A Summary Court Martial may be held by— I. A. W. 90.

(*a.*) Any European officer in actual command of a regiment or corps.

(*b.*) Do. in command of a detachment of, or equivalent in strength to, three troops or companies.

(*c.*) Do. in command of any European corps or detachment to which native details, subject to these articles, are attached.

(*d.*) Do. in charge of an arsenal, ordnance establishment, or camp equipage depôt.

(*e.*) Do. in command of a detachment of any strength in detached situations, beyond sea, or

out of British India, or on service in the field, or when immediate example is necessary, and a Detachment Court Martial cannot be assembled, nor reference made to superior authority without detriment to the service. *No warrant.*

Observe that, with regard to Regimental and Detachment Courts Martial, there is no limitation as to the *rank* of the convening officer; a subaltern can convene if in command.

COMPOSITION, ETC.

I. A. W. 74. A General Court Martial must consist of—as a minimum—

In British India ...	..	9 officers.
Out of British India ...	...	7 do.
I. A. W. 75. If convened under an order in Council	..	5 do.

In this last case, it shall, *if so provided in the order*, be composed of either native or European officers.

I. A. W. 96. The Governor General or the Governor of a Presidency may order any Court Martial to be composed of all European officers, or may authorize any officer so to compose courts.

I. A. W. 103. The President is not specially appointed by warrant or order. The senior officer is the President. In case of his death or unavoidable absence, the next senior takes his place without any special appointment, provided that the necessary minimum number remain.

Court Martial Warrant. No native officer below the rank of subahdar, risaldar, or risaidah can be President of a General Court Martial.

There is *no* rule about the length of time an officer must have been in the service to be qualified to sit on a General Court Martial.

Any person subject to the Indian Articles ordered for trial by Court Martial can claim to be tried by European officers, except in the case of trials under an order in Council [I.A.W. 75], when it may have been ordered that it shall consist of natives. I. A. W. 97.

Every Court Martial *must* have an Interpreter. I. A. W. 102.

Every General Court Martial *must have* a Judge-Advocate, "who shall conduct the proceedings," *except* General Courts Martial under an order in Council, which need not have a Judge-Advocate. Every District or Garrison, Regimental or Detachment Court Martial, must, if composed of native officers, be attended by an European superintending officer of not less than four years' service. Mutiny cannot be tried by any other than a General Court Martial. I. A. W. 101.

No Court Martial other than a General Court Martial can try a commissioned officer or award a sentence of death, transportation, or imprisonment over one year. I. A. W. 130, d.

A Detachment General Court Martial, however, must be an exception to this, for it is declared to "have the same powers as a General Court Martial." I. A. W. 78.

Civil offences can only be tried by Court Martial *out of British India*. They can then be tried by a General Court Martial, which must have a Judge-Advocate. I. A. W. 171.

No evidence is to be taken of previous convictions, character, &c., in such case. The sentence is to be in accordance with the Indian Penal Code. I. A. W. 172. I. A. W. 173.

Sentence not to be carried out till confirmed by proper authority. Sentence of death not to be carried out till confirmed by Commander-in- I. A. W. 174.

Chief of the Presidency to which the prisoner belongs; or if he belong to no Presidency, by Commander-in-Chief in India; or, *when out of British India*, by the officer commanding the forces with which the offender is serving.

POWERS OF SENTENCE.

I. A. W. 76. A General Court Martial can sentence to—

Death.

Penal servitude for life, penal servitude not over ten years, and not less than four years.

Transportation for life, or not less than seven years.

Imprisonment, with or without hard labour, and with or without solitary confinement, not exceeding fourteen years.

Dismissal from the service.

Suspension from rank, pay, and allowances for a stated period.

Degradation to an inferior grade.

Loss of standing in list of rank.

Reduction to the ranks.

Corporal punishment, not exceeding fifty lashes.

Forfeiture of additional pay, good conduct pay, and claim to pension.

Forfeiture of arrears of pay and allowances.

Stoppages.

Also, if any person be sentenced to transportation or to imprisonment for seven years or more, the court *may* adjudge forfeiture of the rents and profits of his moveable and immoveable estate during such punishment.

In above note as follows:

DEATH, sentence of, is only awardable for offences against Articles 7 to 23 inclusive, and

here must be a majority of two-thirds to carry I. A. W. 119.
, *except in the case of a court held under an rder in Council, when a majority is sufficient.*

PENAL SERVITUDE OR TRANSPORTATION, only for ffences against the same articles.

Penal servitude is to be given to Americans, I. A. W. 144.
r Christian Europeans not of British birth, or heir christian legitimate lineal descendants.

TRANSPORTATION, to other persons subject to he Indian Articles of War.

Transportation, or imprisonment *with hard* I. A. W. 155
abour exceeding three months, involves, necesarily, dismissal.

(*a.*) From date of confirmation in the case of a sentence of a Court Martial.

(*b.*) From date of the sentence in the case of a criminal court.

Any person, below the rank of warrant officer, I. A. W. 157.
sentenced for *disgraceful conduct* to—

Dismissal,
Imprisonment with hard labor,
Corporal punishment,

shall, *on confirmation* of such sentence, be dismissed with ignominy.

PENAL SERVITUDE limited as follows:

For life, for offences against Articles 7 to 23, and for abetting offences under Articles 7, 8, 10, 13, 14, 18, 19.

Not exceeding ten, and not less than four years, for abetment of offences under Articles 9, 11, 12, 15, 16, 17, 20 to 23.

IMPRISONMENT is limited as follows:

Not exceeding fourteen years, for offences against Articles 7 to 23, or abetting offences against Articles 7, 8, 10, 13, 14, 18, 19.

I. A. W. 71. *Not exceeding ten years*, for abetting any other offence liable to death or transportation for life.

I. A. W. 54—56. *Not exceeding three years*, for offences against Articles 54, 55, 56, *viz.:* embezzlement, wilful destruction of Government property, and giving wilful false evidence.

For abetting other offences than those above mentioned, imprisonment is limited to *half* what could be given for the crime abetted.

I. A. W. 133. *Not exceeding two years*, for any other offences against the Articles.

I. A. W. 57. DISMISSAL. Observe that this is imperative for embezzlement, wilful destruction of Government property, and giving wilful false evidence; as also is forfeiture of arrears of pay and allowances. Dismissal forfeits all claim to pension.

SUSPENSION FROM RANK, PAY, AND ALLOWANCES. Observe that this is only awardable to persons of or above the rank of warrant officer, and cannot be awarded for abetment, or for offences for which dismissal is imperative.

This last remark applies also to

DEGRADATION TO LOWER GRADE, awardable to sub-assistant surgeons, hospital assistants, native doctors, and warrant officers.

I. A. W. 130—132. LOSS OF STANDING IN LIST OF RANK, awardable to any offender of or above the rank of non-commissioned officer.

I. A. W. 132. REDUCTION, to non-commissioned officers *only*, and not for abetment or for offences involving compulsory dismissal.

CORPORAL PUNISHMENT can be given under the Indian Articles at any time and place, but only to reduced non-commissioned officers and others below that rank.

Forfeiture of good conduct pay *necessarily* follows conviction by any Court Martial, and may be awarded by order of the commanding officer. I. A. W. 165.

On conviction of disgraceful conduct, a General, District or Garrison Court Martial *may* award forfeiture of additional pay, good conduct pay, and claim to pension on discharge, which might have accrued from former service, or to forfeit such advantage absolutely whether from former or future service. I. A. W. 136.

Claim to pension is forfeited by dismissal. I. A. W. 3, 4.

Forfeiture of arrears of pay and allowances is imperative, on conviction of disgraceful conduct, if the offender be sentenced to dismissal, or to a punishment which involves dismissal, to the extent necessary to make good any proved loss or damage arising from disgraceful conduct. I. A. W. 137.

Any court *may*, in addition to dismissal or to a sentence involving dismissal, sentence any person to such forfeiture to the extent necessary to make good any proved loss or damage arising from misconduct. *Stoppages* are awardable when dismissal is not given, and when any loss or damage is charged and proved as arising from misconduct. The amount of loss or damage must *always* be proved. Stoppages are not to extend beyond one year, and are limited to— I. A. W. 137.

Officers, two-thirds of pay and allowances.

Other persons, one-half of pay and allowances.

NOTE.—*Under Indian Articles of War there is no such punishment as forfeiture of medals, decorations, annuities, and gratuities.*

DETACHMENT GENERAL COURTS MARTIAL.

These may be said to be of two kinds, *viz.:*

1. Those convened by the Commander-in-Chief of a Presidency or by officer holding warrant from him to convene them.

2. Those convened *without warrant* by the officer in actual command of the troops.

The former can try any offences; the latter are limited similarly to English Detachment General Courts Martial,—*i.e.*, they can only try offences against the person or property of inhabitants of the country.

Remember these courts can only be held *beyond the limits of British India, etc.*

I. A. W. 142. If the sentence does not exceed that awardable by a District Court Martial, it can be confirmed by the officer who appointed the court. If it exceed such sentence, it must be confirmed by the officer commanding the forces with which the offender is serving. They are composed as similar English courts. They need not be "approved" as well as confirmed.

DISTRICT OR GARRISON COURTS MARTIAL.

I. A. W. 80. A District Court Martial must consist of seven officers, unless that number cannot be *conveniently* assembled, when it may consist of five.

If held under an order in Council, it may consist of three, who may, if so ordered, be all European officers or all natives.

I. A. W. 81. "When necessary" it may be composed of officers all of the regiment to which the prisoner belongs.

The only difference in the court for trial of a sub-assistant surgeon, hospital assistant, native doctor, or warrant officer, is that not more than two officers of the regiment, corps, etc., to which he belongs are to sit on the Court.

I. A. W. 82. A District Court Martial can try any person subject to the articles except commissioned officers, and can try any offence except mutiny.

If the court be composed of native officers it must be attended by an European superintending officer of not less than four years' service, who shall conduct the proceedings. I. A. W. 101.

If a Court Martial be composed of all European in place of native officers, it should be stated in the heading of the proceedings, or else a certificate should be attached, showing, that either the prisoner had demanded to be so tried, or that it was so constituted by order. I. A. W. 96, 97.

Though a District Court Martial can legally try anything except mutiny, yet capital offences should not, ordinarily, be so tried except with special sanction.

POWERS OF SENTENCE.

Imprisonment with or without hard labour and solitary confinement for a period not exceeding one year.

Dismissal.

Suspension from rank, pay, and allowances.

Degradation.

Loss of standing.

Reduction to the ranks.

Corporal punishment not exceeding 50 lashes.

Forfeiture of additional pay, good conduct pay, and claim to pension.

Forfeiture of arrears of pay and allowances.

Stoppages.

Imprisonment can only be given to persons below the rank of warrant officer.

For the other punishments, see remarks under General Courts Martial.

Punishments awardable to sub-assistant surgeon, hospital assistant, native doctor, or warrant officer, by sentence of a District Court Martial. I. A. W. 131.

Dismissal.

Suspension from rank, pay, and allowances for a stated period.

Reduction to a lower grade or class.

Being placed one or more steps lower in the list of his rank.

Forfeitures.

Stoppages.

REGIMENTAL COURTS MARTIAL.

A. W. 84. These must consist of five officers, unless that number cannot *conveniently* be assembled, when three are sufficient.

They can try any person below the rank of warrant officer.

There is no limitation as to rank of the President or of the convening officer.

I. A. W. 85. A Regimental Court can *never* try mutiny, or desertion, or disgraceful conduct.

On boardship or on the line of march they can try anything except these.

Grave offences, such as are not ordinarily tried by Regimental Court Martial, can be tried by it when the officer commanding the division or district so directs.

POWERS OF SENTENCE.

Dismissal.

Loss of standing.
Reduction to the ranks. } To non-commissioned officers.

Imprisonment with or without hard labour or solitary confinement, for a period not exceeding six months.

Corporal punishment not exceeding fifty lashes.

Forfeiture of arrears of pay and allowances.

Stoppages.

DETACHMENT COURTS MARTIAL.

Are the same in every respect as Regimental Courts Martial, except that the first is composed of officers of a detachment of one regiment, and the latter of officers of a detachment of men of different regiments, but with regard to confirmation these two Detachment Courts are limited as follows:

If the detachment consist of three troops or companies, or the equivalent of this number, the commanding officer can confirm. I. A. W. 142. g, h.

If of less than this number, the sentence shall be submitted for confirmation to the officer commanding the prisoner's regiment, or to the nearest superior officer holding a command of not less than a regiment.

In the following situations, however, the officer commanding a small detachment *can* dispose of and carry out the sentence, *viz.:* Exceptional case.

(*a.*) In detached situations beyond sea.

(*b.*) Out of British India.

(*c.*) On service in the field.

(*d.*) If an immediate example be necessary and reference as above cannot be made without detriment to the service.

When a Regimental or Detachment Court Martial tries an offence, not within its ordinary jurisdiction, on the line of march or on boardship, the proceedings must be sent for the information of the Commander-in-Chief of the Presidency to which the regiment or detachment belongs, and of the Commander-in-Chief of the Presidency in which they may be or to which they are proceeding. I. A. W., 129.

SUMMARY COURTS MARTIAL.

I. A. W. 91. The European commanding officer holding it
I. A. W. 127. alone constitutes the court. *He is sworn.*

I. A. W. 125. The court has to be attended by two other
I. A. W. 127. commissioned officers, European or native, *who are not sworn.*

There must be an Interpreter, *who is sworn* as such, and he may be one of the three officers above mentioned.

I. A. W. 92. These courts can try any person amenable to the Indian Articles *below* the rank of warrant officer, *who is liable to trial by courts composed of native commissioned officers,* provided that he be under the command of the officer holding the court.

I. A. W. 93. They *can* try any offence *except mutiny.* But, unless there be an emergent reason, and reference cannot be made to superior authority, they must not try—

Capital offences, I. A. W. 7 to 23, inclusive.

Disgraceful offences, [except those under I. A. W. 58, 59, 62, 63.]

Offences against the commanding officer himself.

POWERS OF SENTENCE.

I. A. W. 94. *a.* If held by an officer commanding a regiment or corps—

The same as a District Court Martial.

(*b.*) If held by any other commanding officer—

The same as a Regimental Court Martial. A
I. A. W. 90. Summary Court Martial needs no confirmation, but the sentence can be inflicted at once, provided that the officer holding it has five years' standing. If he have not this service it must be approved by the nearest superior military officer holding a command of not less than a regiment.

Evidence is taken at these courts on oath, but previous convictions and character are recorded by the commanding officer holding the court, as of his own knowledge. I. A. W. 128.

The proceedings are to be signed by the commanding officer and the officers attending the trial, and are to be forwarded at once to the officer commanding the division or district. I. A. W. 12.

The trial may be set aside or annulled by—

(*a.*) The Commander-in-Chief in India or of the Presidency.

(*b.*) The Officer Commanding the division or district.

(*c.*) If held in a force not attached to a Presidency, by the officer commanding such force; but only on the merits of the case, not on any technical ground.

GENERAL REMARKS.

President. The senior officer sits as president without any special appointment. In case of his death, or unavoidable absence, the next senior presides without any special appointment. I. A. W. 103.

If there be no other qualified person available he acts as interpreter. I. A. W. 102.

In matters *other than finding or sentence* he has a casting vote. I. A. W. 118.

In case of a General Court Martial appointed under an order in council, or of any other Court Martial composed of European officers under Article 96 or 97, he conducts the proceedings. I. A. W. 104.

Interpreter is appointed for every Court Martial, but has no vote; he is sworn, according to the oath or affirmation laid down in the Articles, by the officer conducting the proceedings; he, or the officer conducting the proceedings administers I. A. W. 102. I. A. W. 108. I. A. W. 109.

the oath to the president and members of the
I. A W. 110. court; and he, or any other European officer of the court administers the oath to the judge-advocate or superintending officer.

I. A. W. 102. When the court is composed of native officers, he forms part of such court.

I. A. W. 106. There is no restriction as to the hours during which courts may be held.

I. A. W., Part III, a. No person acquitted or convicted of any offence by either a Court Martial or a Court of Criminal Justice is liable to be again tried or punished for the same offence by any court whatsoever.

Such person may, however, be dismissed the service.

I. A. W. 115. It is, however, laid down that if at any trial for desertion, absence without leave, &c., the court do not pursue the course directed by Article 115, the convening officer may annul the proceedings, and order a fresh trial by the same or any other Court Martial. I should doubt if this would be considered legal, had such original court either convicted or acquitted the prisoner.

The term 'year' means calendar year.

'*Month*' means calendar month.

I. A. W. 134. SOLITARY CONFINEMENT is limited to fourteen days at a time, with intervals between the periods of solitary confinement at least equal to such periods.

It cannot exceed eighty-four days *in one calendar year.*

POWERS OF A COMMANDING OFFICER.

Bengal Regulations, para. 482, or Sec. VI, para. 5, new ed. Native commissioned officers get different rates of extra or good conduct pay; they can be dis-rated or placed on a lower scale of pay by order of the commanding officer, a full report being made to head quarters.

A commanding officer can dismiss any attested person of or below the rank of non-commissioned officer who, after being dismissed or discharged, re-enters the service without stating the fact of his previous dismissal or discharge. I. A. W. 5.

A commanding officer can remand regimental staff non-commissioned officers to ordinary regimental position,—*e. g.*, kote duffadars of troops and color havildars of companies, to duffadar and havildar.

A non-commissioned officer may be reduced by order of the Commander-in-Chief of a Presidency or of the officer commanding any force not attached to a Presidency. I. A. W. 164.

The Commander-in-Chief in India is authorized, under the authority of the Governor-General in Council, to prescribe minor punishments, and to specify by whom they may be awarded. Courts Martial are forbidden to award these punishments. I. A. W. 165.

Unless specially ordered by the Commander-in-Chief, no one above the rank of non-commissioned officer is liable to such minor punishments. They are not awarded, however, to non-commissioned officers except as mentioned above. I. A. W. 165.

The Commander-in-Chief *has* "specially ordered" that native medical subordinates may be fined by the commanding officer of the regiment, detachment, or depôt, on the medical officer's request. Such fine not to exceed five days' pay. G. G. O. Bengal, 839. 5th August 1876.

These punishments have been ordered to be as follows:

1. Imprisonment for seven days.

To be reserved, as far as possible, for riot, disobedience, violence or insolence to superiors, and should precede any further punishment. Bengal Regulations, Sec. VI, para. 8, new ed.

2. Confinement to lines not over thirty days.

This includes any period of imprisonment, and carries with it punishment drill for whole period, if it be for fifteen days or under, but not more than fifteen days altogether.

Punishment drill is limited to one hour at a time, and to two hours a day.

3. Extra guards or picquets, for irregularities on those duties.

I. A. W. 165. 4. Forfeiture of good conduct pay, either as a substantive punishment, or in addition to other minor punishment.

Such pay is not necessarily forfeited by a minor punishment.

These punishments can be given on detachment by any commissioned officer, European or native, *if permitted by the commanding officer; and, if he authorise it,* Wing and Squadron Commanders and Adjutants may award ten days' confinement to lines with drill; and Quarter Masters, Wing and Squadron Officers, and Doing Duty Officers may award the same for seven days; whilst native officers can give three days only.

PUNISHMENTS TO NATIVE FOLLOWERS.

I. A. W. 166. The commanding officer of any regiment, corps, or detachment, European or native, when in camp or at any frontier post to which this Article (166) may be specially extended, may sentence native followers—

(*a.*) If above the degree of a menial servant—

To imprisonment for thirty days or less, or

Fine, fifty rupees or less.

(*b.*) If a menial servant—

Imprisonment not exceeding seven days, or

Corporal punishment not exceeding twelve strokes of a rattan.

Where there is no Cantonment Magistrate, the officer commanding the cantonment may, for breach of cantonment rules, award any person *not subject to the Indian Articles, nor an European British subject, or an officer or soldier*— I. A. W. Part III, C.

Fine, not exceeding fifty rupees, or

Imprisonment, thirty days.

The latter either in a military guard or a jail.

POWER OF APPEAL.

Any person subject to the articles thinking himself wronged may appeal to his commanding officer; if he belong to a troop or company, to the officer commanding the same. If the person complained against be such officer, then the complaint is to be made to the next senior. I. A. W. 167.

The officer complained to must examine into the matter, and, if necessary, refer it to proper authority.

If the complaint be frivolous, the person preferring it may be tried by any Court Martial competent to try him, and may be punished according to the powers of such court; but cannot be given dismissal, corporal punishment, or imprisonment with hard labour.

There is no right given of appealing to a Court Martial against the award of a commanding officer.

PROVOSTS MARSHAL.

Provosts Marshal may be appointed by the Commander-in-Chief of a Presidency or the officer commanding the forces in the field, for the prompt repression of irregularities in the field or on the line of march. I. A. W. 168.

The duties of a Provost Marshal are to take charge of prisoners confined for offences of a I. A. W. 169.

general description, to preserve good order and discipline, and to prevent breaches of the same by persons belonging to or attached to the army.

He may give corporal punishment to any such persons below the rank of warrant officer who commits a breach of good order and military discipline *in his view, or in that of one of his assistants.* Such corporal punishment must not exceed what a Court Martial can give, and is to be limited according to orders from the officer commanding the troops.

If the offence was *not* committed in his view, or in that of his subordinates, he must report the matter, not punish it himself.

NON-MILITARY OFFENCES.

I. A. W. 170. As before mentioned these cannot be tried by Court Martial *in British India*, but the offender must be handed over to the nearest Magistrate.

If applied to, all persons in or attached to the army must assist the officers of justice to apprehend and secure such person.

Penalty for not so assisting the civil power is "any punishment other than death or transportation, awardable under the Articles." *It is not stated how or by whom such punishment is to be awarded, but it may be presumed that it means by sentence of a Court Martial.*

DEBTS, &c.

I. A. W. Part III, b. No attested person is liable to arrest for debt; nor can his arms, horse, clothes, equipment, &c., be seized ; nor can his pay and allowances be attached.

There is nothing in the Indian Articles of War about Courts of Request ; they are held under a

separate Act of the Legislature. They can only be held—

1. Where there is no Small Cause Court,
2. In any camp or detachment in the field,
3. Out of British territory.

They are convened monthly by the officer commanding the station or force ; composed of either three European officers or three native officers and one European superintending officer of not under five years' standing.

All natives who are subject to the Indian Articles of War are liable to these courts. They can decide matters up to two hundred rupees in India ; out of India, unlimited. If held out of India they must be composed of European officers.

These courts must not meddle with caste suits, real property, or contract debts over twenty rupees, unless the latter be written in the vernacular and signed by the defendant, or for him by some one *not* the plaintiff.

The plaintiff cannot obtain a judgment for more than Rs. 200, whether there be only one or several claims ; and the court having given judgment, no further claim can be preferred on the same ground to any other court.

The plaintiff and defendant can both be examined.

The court can direct either general or special execution, and the commanding officer can order either to be carried out, no matter which the court directed.

General execution.—On written order from the commanding officer, *private* property may be seized and sold.

If debtor be not attested he may be arrested and imprisoned (in any neighbouring civil jail or within military limits) for two months, unless debt be paid sooner.

Special execution.—When this is ordered, the debt is to be satisfied out of the debtor's pay and allowances, but not otherwise.

Not more than half a commissioned officer's pay and allowances can be thus stopped monthly, and in case of a soldier or non-commissioned officer, not more than one quarter of his monthly pay and allowances.

DISMISSAL.

I. A. W. 3. A commissioned officer may be dismissed the service by—

(*a*) Sentence of a General Court Martial,
(*b*) Governor General of India in Council,
(*c*) Governor of Presidency in Council,
(*d*) Commander-in-Chief of Presidency,

and, if so dismissed, he forfeits all claim to pension.

I. A. W. 4. Any person other than a commissioned officer can be dismissed by the above-mentioned persons and by sentence of any Court Martial which can try him, and if he belong to a force not attached to a Presidency, by the officer commanding such force.

I. A. W. 5. A commanding officer can dismiss any man who, after dismissal or discharge, re-enters the service without stating the fact.

I. A. W. 155. Any sentence by a court, civil or military, of transportation or of imprisonment with hard labour exceeding three months, involves dismissal.

I. A. W. 156. No person who has undergone such sentence is to be re-admitted to the Service, or to be entitled to any pension.

On a sentence of dismissal, imprisonment with hard labour or corporal punishment, for disgraceful conduct, on any person below the rank of warrant officer, being confirmed, the offender is to be dismissed with ignominy, and a copy of the sentence is to be sent by the Adjutant-General of the army to the chief civil officer of the district. I. A. W. 157. I. A. W. 158.

Every attested person dismissed or discharged must be given, by his commanding officer, a certificate showing by what authority, and for what cause, he is dismissed or discharged, and the full period of his army service. I. A. W. 6.

PROCEEDINGS BEFORE TRIAL.

Indian Articles direct arrest or confinement of an offender before trial, and direct that he shall not "be detained in arrest or confinement longer than is necessary for the purposes of justice." I. A. W. 100.

A native non-commissioned officer or soldier forfeits pay and allowances for the period of previous confinement on a charge of which he may be subsequently convicted, and gets subsistence allowance only.

COURTS OF ENQUIRY.

Only one Court of Enquiry takes evidence on oath, *viz.*, the court on illegal absence on any person subject to the Articles absent for two months; they make a declaration, which is recorded by the commanding officer in the regimental books, and if the absentee do not surrender or be apprehended, this record has the legal effect of a conviction for desertion. If he surrender, or be apprehended, this record, or a properly certified copy, is presumptive evidence of the facts therein stated. I. A. W. 162.

There is no number of officers laid down to compose the court, but it may be composed of either European or native officers, *or of both in conjuction.*

Bengal Regulations, para. 2677, or Sec. II, para. 42, new edition.

For ordinary courts, *vide* Bengal Regulations, paragraphs 1566 to 1573, or Section VI, paragraphs 124—131, new edition.

A court is held, when required for reporting on claims to the native "order of merit."

MILITARY COURTS OF INQUEST.

These are not mentioned by the Articles of War, but are held under the Presidency Regulations They are convened by officers commanding divisions, districts, brigades, or station. They consist of three officers, of whom one should be a medical officer.

APPLICATION FOR TRIAL.

Although applications for trial are *addressed* to the staff officer of the General Officer,—*i.e.*, Assistant Adjutant-General, Brigade Major, or Station Staff Officer, yet it has been ordered that, *in India*, to save time, they are to be sent direct to the Divisional or District Deputy Judge-Advocate.

This applies to all applications for trial by Court Martial in India, whether under the Mutiny Act or the Indian Articles of War.

SUMMONING WITNESSES.

I. A. W. 122.

For a General Court Martial, witnesses are summoned by the Judge-Advocate. For a minor Court Martial by the officer ordering the trial.

For a military witness the summons is sent to his commanding officer.

For civil witness it is sent to the Magistrate

within whose jurisdiction he resides, and he is bound to give it effect.

If the witness be required to produce documents, they must be accurately described.

A witness going to, or returning from, a Court Martial under summons is privileged from arrest in any civil court or proceeding: and if so arrested, the Court Martial may discharge him from such arrest. I. A. W. 124.

CONTEMPT OF COURT.

If contempt of court be committed by a person subject to the Articles in the presence of the court, it is to be punished under the Articles,—*i.e.*, the offender may, on conviction by the same or any other Court Martial, be sentenced to any punishment which such court can award. I. A. W. 123. I.A.W., 68. 69.

If committed by a person *not* subject to the Articles, the offender shall be delivered to a Magistrate, who shall proceed against him as if it had been committed against a court of criminal justice. I. A. W. 123.

JUDGE-ADVOCATE.

The Judge-Advocate should not be the interpreter; though there is no law against it, still it is not the custom of war in like cases.

The Judge-Advocate may be relieved at any time by any officer *duly appointed* by the officer who has a warrant enabling him to appoint Judges-Advocate. It must not be forgotten, however, that *the new Judge-Advocate must be at once sworn.*

It is not an uncommon thing to have to appoint an officer to act as Judge-Advocate on such occasions as, say, the re-assembling of a General Court Martial for revision, when the regular De-

puty Judge-Advocate, who may have come a long way to attend the court, may have had to go back, and it would be inconvenient to recall him.

PRISONER'S 'FRIEND,' OR COUNSEL.

Bengal Regulations, para. 1430, or Sec. VI, para. 84, new edition.

Such person may not examine or cross-examine witnesses, or address the court, but may only aid the prisoner with suggestions, etc.

WITNESSES.

I. A. W. 111—113.

A witness is examined on oath or affirmation, in such form as is most binding on his conscience. If the same witness appear to give evidence at more than one trial by the same Court Martial, he must be sworn afresh for each trial.

Bengal Regulations, para. 1429, or Sec. VI, para. 83, new edition.

When a witness uses any uncommon or peculiar word or idiom, it should be recorded in the Roman character, and the interpreter's translation of it. *This applies also to courts held under the Mutiny Act.*

PRISONER.

If the prisoner persist in outrageous conduct, he may be handcuffed, or gagged, after due caution, but only when really necessary.

PROCEEDINGS ON TRIAL.

The books which ought to be laid on the table for reference at Courts Martial are—

Indian Articles of War.

Presidency Regulations.

Indian Evidence Act.

Bibles, to swear Europeans.

General orders, etc., regarding native trials.

Challenge. I. A. W. 107.

The Judge-Advocate and the superintending officer can *not* be challenged.

At trials under an order in council, or at sum-

mary trials, there is *no right of challenge*. There is no distinction as to President or member in challenging ; the officer objected to withdraws, and a majority of the remainder decides the point.

The officer conducting the proceedings first swears the Interpreter. Court Sworn. I. A. W. 108. I. A. W. 109.

Then the Interpreter, or the officer conducting the proceedings, swears the President and members.

Then the Interpreter or other European officer of the court swears the Judge-Advocate or superintending officer.

PREVIOUS CONVICTIONS, CHARACTER.

After conviction and before sentence, evidence of previous convictions, civil or military, is taken in the case of any person subject to the Articles of War. Evidence of character is taken for any one below the rank of a warrant officer holding an honorary commission. These are proved either orally, or by production of the Court Martial books, or certified extracts. On Summary Courts, the commanding officer records them as of his own knowledge. I. A. W. 117. Bengal Regulations 1438, or Sec. VI, para. 92, new edition. I. A. W. 128.

SENTENCE.

In a sentence of death, court must state whether the offender is be shot or hanged. All the members sign the proceedings, and the Judge-Advocate, or superintending officer, as well as the Interpreter; and on Summary Courts, the attending officers. I. A. W. 141.

When the prisoner is convicted of disgraceful conduct and sentenced to dismissal, imprisonment with hard labour, or corporal punishment, a descriptive roll must be attached showing offen- See I. A. W. 158.

ıto effect till confirmed by the Commander-in-
hief of the Presidency to which the offender
elongs; or, when he belongs to a force not
tached to a Presidency, by the officer command-
ıg such force, *except on foreign service, or when*
ference cannot be made to superior authority
ithout detriment to discipline.

COMMUTATION, &c.

The officer who can confirm a sentence can I. A. W. 142, i.
mmute it as follows:

DEATH may be commuted to transportation for I. A. W. 143.
e, or not less than seven years; or to imprison-
ent with or without hard labour, and with or
thout solitary confinement, not exceeding four-
en years.

TRANSPORTATION may be commuted to impri- I. A. W. 144.
ıment with or without hard labour, and with
without solitary confinement, for any period
exceeding fourteen years, and not exceeding
term of transportation awarded by the court.

DISMISSAL on a warrant officer or his superior I. A. W 145.
y be commuted to suspension from rank, pay,
l allowances for a stated period.

CORPORAL PUNISHMENT may be commuted to I. A. W. 147.
nissal from the service; or to imprisonment
hout hard labour, but with or without solitary
finement, for any period not exceeding one
r which the court martial which tried the
nder might have awarded.

MPRISONMENT WITH HARD LABOUR may be com- I. A. W. 148.
ed to dismissal from the service; or to impri-
nent without hard labour, and with or with-
solitary confinement, for the period mentioned
ıe sentence or for any shorter term.

ISMISSAL ON A NON-COMMISSIONED OFFICER may I. A. W 149.
ommuted to reduction to the ranks.

der's place of residence. An entry should be made of the time at which the court finally closed.

CONFIRMATION.

I. A. W. 142. GENERAL OR DISTRICT COURTS MARTIAL must be confirmed by either—

(*a.*) The Commander-in-Chief of a Presidency.

(*b.*) An officer holding warrant from him to confirm such courts.

(*c.*) Officer in actual command of troops authorized to do so by Governor General or Governor of Presidency in Council.

(*d.*) Officer commanding native troops not attached to a Presidency, who holds a warrant giving him this power from the Commander-in-Chief in India.

DETACHMENT GENERAL COURTS MARTIAL may be confirmed by the officer holding the court, provided that the sentence do not exceed that awardable by a District Court Martial.

If it exceed such sentence, it must be confirmed by the commander of the forces with which the offender is serving. *Vide ante.*

I. A. W. 174. No sentence of death is to be carried into effect till confirmed by Commander-in-Chief of Presidency; or, out of British India, by officer commanding the forces; or, when the offender does not belong to any Presidency, by the Commander-in-Chief in India.

I. A. W. 142. The officer appointing a Regimental Court Martial may confirm it.

With regard to Detachment and Summary Courts Martial, *vide ante*, remarks under those headings.

I. A. W. 146. Sentences on warrant officers and on persons superior to them in rank are not to be carried

into effect till confirmed by the Commander-in-Chief of the Presidency to which the offender belongs; or, when he belongs to a force not attached to a Presidency, by the officer commanding such force, *except on foreign service, or when reference cannot be made to superior authority without detriment to discipline.*

COMMUTATION, &c.

The officer who can confirm a sentence can commute it as follows: I. A. W. 142, i.

DEATH may be commuted to transportation for life, or not less than seven years; or to imprisonment with or without hard labour, and with or without solitary confinement, not exceeding fourteen years. I. A. W. 143.

TRANSPORTATION may be commuted to imprisonment with or without hard labour, and with or without solitary confinement, for any period not exceeding fourteen years, and not exceeding the term of transportation awarded by the court. I. A. W. 144.

DISMISSAL on a warrant officer or his superior may be commuted to suspension from rank, pay, and allowances for a stated period. I. A. W 145.

CORPORAL PUNISHMENT may be commuted to dismissal from the service; or to imprisonment *without hard labour*, but with or without solitary confinement, for any period not exceeding one year which the court martial which tried the offender might have awarded. I. A. W. 147.

IMPRISONMENT WITH HARD LABOUR may be commuted to dismissal from the service; or to imprisonment without hard labour, and with or without solitary confinement, for the period mentioned in the sentence or for any shorter term. I. A. W. 148.

DISMISSAL ON A NON-COMMISSIONED OFFICER may be commuted to reduction to the ranks. I. A. W 149.

A sentence on a non-commissioned officer of reduction *and* corporal punishment or imprisonment may be *mitigated* to reduction only.

A confirming officer can of course refuse to confirm the sentence, which would then become inoperative.

I. A. W. 160. The Governor General in Council in all cases, and the Governors of Presidencies in Council, or the Commanders-in-Chief of Presidencies, with regard to persons in their territories or under their command, can pardon any person convicted by Court Martial of a military offence, or remit the punishment awarded, wholly or in part.

I. A. W. 142. The confirming officer is given, under the Indian Articles, power to 'annul' any sentence to which his confirmation is necessary.

Summary Courts Martial may be 'set aside,' but not on technical grounds. *Vide ante* 'Summary Courts Martials.'

NOTE.—*There is no authority given in the Articles for a sentence of death being commuted to penal servitude in the case of Europeans, etc., who are not liable to transportation; nor is there any provision for commuting a sentence of penal servitude to imprisonment for such persons.*

EXECUTION OF SENTENCE.

I. A. W. 150. TRANSPORTATION. Offender to be delivered to the officer in charge of the nearest jail, with a proper warrant.

I. A. W. 151. IMPRISONMENT WITH HARD LABOUR. Offender to be delivered with warrant to nearest jail. If imprisonment be without hard labour, the man is *not* to be sent to jail; and if the imprisonment be for less than three months, and the man to be kept in the army, hard labour should not be awarded. But the Commander-in-Chief of a Presidency or of a force not attached to a Presidency may direct imprisonment (whether with or

Bengal Regulations 1725, or Sec. VI, para. 320, new edition.

I. A. W. 152.

without hard labour) to be carried out in any jail, and can order a prisoner's removal from any jail *under military control* to any other place of confinement within the limits of his command.

If, however, the prisoner be in any jail *not* *subject to military control*, it is the civil authority only, *i. e.*, the Government of India, or that of the Presidency, which can order his transfer to military custody, or to another place of confinement. I. A. W. 153.

All District Courts Martial are sent to the Deputy Judge-Advocate, who looks them over and lays them before the confirming officer. All Regimental, Detachment, and Summary Courts under the Indian Articles of War are sent to him to be looked over: See Bengal Army Regulations paragraphs 1457 to 1459, or Section VI, paras. 111—113, new edition.

CRIMES AND PUNISHMENT.

VIOLENCE TO SUPERIOR OFFICER. The Indian Articles make no distinction between the case of the officer being in the execution of his office or not. The words are "whether on or off duty, under any circumstances in which the superior officer is distinguishable as such." Also under the Indian Penal Code, an assault may be committed by making any gesture or preparation with the knowledge that it will cause any person to apprehend criminal force. I. A. W. 8. Indian Penal Code, 351.

Punishments. Death, transportation not under seven years, imprisonment, with or without hard labour and solitary confinement, not exceeding *fourteen years*, or such other punishment as a General Court Martial may award.

Under the Indian Articles enlisting in one corps without being discharged first from another is I. A. W. 11.

not classed as desertion, but is a separate crime liable to the same punishment.

I. A. W. 12. Observe that a sentry for sleeping on, or quitting his post without leave, is only liable to death *in time of war.* In time of peace he is only punishable under Indian Article of War 50, under which *any* Court Martial can give such punishment other than death or transportation as it has power to award.

I. A. W. 13. When sentry, or on guard, plundering or wilfully destroying property under his or the guard's charge—

Punishable with death, transportation, etc.

I. A. W. 21. Quitting guard, etc., *in time of war* without leave is a capital crime.

I. A. W. 25. Scandalous conduct, etc., on the part of a native officer or warrant officer is charged as "behaving in a manner unbecoming his position and character."

I. A. W. 29. Knowingly enlisting a deserter is a separate crime under Indian Articles.

I. A. W. 37. Gross insubordination to superior officer in the execution of his office.

I. A. W. 41. Extortion.

I. A. W. 43. Being in command, and neglecting to compensate a person injured by subordinate.

I. A. W. 44. Intentionally insulting any person's religion.

I. A. W. 45. Taking bribes.

I. A. W. 49. Appearing armed in camp when off duty.

I. A. W. 56. Note that the false evidence given must be "before a Court Martial, or other *military* court competent to administer an oath."

I. A. W. 57. For this offence, and embezzlement, or wilful destruction of Government property entrusted

to him for the public service, there are special penalties, *viz.*:

By General Court Martial.

Compulsory. Dismissal, and forfeiture of arrears of pay and allowances.

Not compulsory. Imprisonment, with or without hard labour and solitary confinement, not exceeding three years.

or—by District Court Martial.

Any or all of the penalties which such court may inflict for disgraceful conduct.

Embezzling Government property not entrusted on the public account is triable under Article 61 as disgraceful conduct, and is punishable by a General or District Court Martial. I. A. W. 61.

Unspecified offences. This Article corresponds to the English 105th Article, but note that, in the Indian Article, "neglecting to obey garrison or other orders" is included under this head, whereas, under the English Articles it has an Article to itself, *viz.*, A. W. 75. I. A. W. 70.

It will be observed that in the above I have only called attention to points peculiar to the Indian Articles.

PRISONERS OF WAR.

No person is entitled to pay and allowances, or to reckon service, whilst a prisoner of war. On rejoining, enquiry is to be made by a Court Martial, which may recommend his being allowed to reckon his service and to receive the whole or any portion of the arrears due to him. If this be confirmed by the Commander-in-Chief of a Presidency, or officer commanding a force not attached to a Presidency, he receives the arrears, and reckons such service. I. A. W. 163.

I. A. W. 114. Absence without leave over two months is presumptive evidence of desertion.

For Court of Enquiry on illegal absence after two months, see before under "Courts of Enquiry."

I. A. W. 115. At trials for desertion and absence without leave, should the accused state that any officer in the civil or military service of Government can explain his absence, the court is to write to such officer, and adjourn till his reply be received. His reply is declared to be receivable as evidence.

If the court is dissolved before the reply comes, or if the court do not act as directed, "the convening officer may annul the proceedings and order a fresh trial by the same or another Court Martial."

I. A. W. 179. A deserter's effects are to be publicly sold, and the proceeds, after paying regimental and other claims, are to be remitted by the commanding officer to the Controller General of Accounts at Calcutta, or the Accountant-General of Fort St. George or Bombay.

I. A. W., Part III, d. Written information of a man's desertion is to be given to the civil authorities, and they are to give all assistance for his capture, and to prevent persons subject to the Articles from travelling without passes.

The Police may arrest any suspected deserter without warrant, and take him before a Magistrate; or if there be no Magistrate readily accessible, then before the nearest military commanding officer.

I. A. W. 154. Any person subject to the Articles imprisoned forfeits all pay and allowances whilst in prison, and also for period of previous confinement, if convicted.

No evidence of general character is given at trial of a warrant officer or person of higher rank. I. A. W. 117.

Should any member of the court be unavoidably absent at revision, the cause must be certified to in the proceedings. I. A. W. 120.

PERSON SUBJECT TO THE ARTICLES DYING.

If no representative of such person be on the spot, the commanding officer shall secure his effects, cause an inventory to be made, and keep a duplicate, and sell the effects publicly; and, after paying debts and funeral expenses, pay the surplus to the person's legal representative. If the surplus be unclaimed for twelve months, it is to be remitted to the Controller General of Accounts, Calcutta, or to the Accountant-General of Fort St. George or Bombay. If the man belonged to no Presidency, then to the Calcutta official. I. A. W. 176.

Civil officers are to aid in apprehending any person subject to the Articles accused of a military offence, on receiving a written application. I. A. W., Part III, e.

Signatures to applications, certificates, etc., by civil or military officers are presumed to be genuine, unless the contrary be proved. I. A. W., Part III, f.

EVIDENCE.

Courts held under the Indian Articles of War are guided by the Indian Evidence Act. All persons can give evidence as witnesses unless the court considers that they cannot understand or rationally answer the questions put to them from tender years, extreme old age, disease of body or mind, or some similar cause. Indian Evidence Act, s. 118.

Husbands and wives can give evidence for or against one another, but cannot be compelled to Do., s. 120. Do., s. 221.

disclose communications made to one another during marriage.

Indian Evidence Act, s. 134. There is no rule laid down as to more than one witness being required in perjury or other charge.

I. A. W. 117. Evidence of previous convictions may be "oral, or in the shape of entries in, or certified extracts from, the Court Martial books, and it shall not be necessary to prove the signature to such certified extracts." For Summary Courts Martial, *vide ante*, under that head.

Indian Evidence Act, s. 31. Admissions are not, under Indian law, conclusive proof of the matter admitted.

Do., s. 25. Confessions to a police officer are not admissible against the accused, nor are confessions when in police custody, unless made before a Magistrate.

Do., s. 30. A confession made by one of several persons who are being jointly tried, *may*, by Indian law, be used against the others.

A confession to a Magistrate is *not* invalidated, by Indian law, by the fact that the accused was not warned that what he said would be brought in evidence against him.

Do., s. 32. Statements made by a person since dead, with reference to the circumstances of the transaction which resulted in his death, *are* receivable, in cases in which the cause of his death comes into question, *whether the person who made them was, at the time, in expectation of death or not.*

Do., s. 167. The improper admission or rejection of evidence is not ground of itself for the reversal of the decision, if it appears that, independently of the evidence improperly received, there was sufficient evidence to justify the decision, or that, if the

improperly rejected evidence had been received, it ought not to have varied the decision.

Those points only have been noticed which are likely to come before Courts Martial, and in which the Indian law differs from the English practice.

SIGNING PROCEEDINGS.

On all courts under the Indian Articles of War the proceedings *must* be signed by all the members, and by the Interpreter. This applies equally to courts composed of European or native officers. I. A. W. 129.

Courts Martial held under the Indian Articles are not required in duplicate.

The proceedings of Native Regimental and Summary Courts Martial are to be numbered regimentally, from the commencement of each year. Bengal Regulations, VI, 116 new, 1462 old edition.

At the trial of a medical subordinate, application should be made to the Judge-Advocate General at Army Head Quarters for a copy of the record of his previous convictions. Do., VI, 91, or 1437 old edition.

Should a medical subordinate, at his trial, produce testimonials, copies are to be attached to the proceedings, and the originals returned to him. Do., VI, 105.

Immediate report must be made by the station authorities to the Adjutant-General of the date of publication of the sentence of dismissal of a warrant officer or native medical subordinate. Do., VI, 108.

If a native soldier be convicted of disgraceful conduct, and sentenced to be dismissed the service, a descriptive roll, both in Persian character and in English, is to be appended to the proceedings. Do., VI, 115, or 1461, old edition.

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